Texas Military Department

Purchasing & Contracting

Revised: March 31, 2015

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General Information

This section provides a brief overview of the State Services Purchasing and Contracting Sections responsibilities, (NGTX-RMP) and describes the administrative procedures required to complete Purchase Orders. The Texas Military Department (TMD) processes a wide variety of purchase orders with suppliers to obtain goods and services.

The TMD procurements will be made through or with the approval of the Comptroller of Public Accountants (CPA), Texas Procurement and Support Services (TPASS) Division, Department of Information Resources (DIR), when applicable and in accordance with the Master Cooperative Agreement (MCA). The agency's policy is to observe all applicable procurement laws and best practices in the procurement of goods and services. The main sources for TMD procurement requirements are found in the State of Texas *Procurement Manual*, the State of Texas *Contract Management Guide* and the *Uniform Grants Management Standards Guide* (UGMS).

All TMD Programs must comply with applicable state and federal laws, TPASS rules/guidelines and agency policy in procuring quality goods and services, at the best value to the TMD and the State of Texas.

All contact with TPASS or DIR regarding procurements will be made or facilitated by the Purchasing and Contracting (NGTX-RMP).

TPASS

Who is TPASS? Texas Procurement and Support Services (TPASS) was established within the Office of the Comptroller as a separate division, to carry out the powers and duties transferred to the comptroller from the Texas Building and Procurement Commission under House Bill 3560, 80th Legislature, 2007. These powers and duties include without limitation, statewide procurement, the historically underutilized business program, administrative support and offices for the State Council on Competitive Government, mail operations, printing and vehicle fleet management. This means TPASS governs the TMD when it comes to purchasing goods and services. Also, TPASS's Statewide Procurement and Contract Management Section has a Purchasing Department with contracts for state agencies to use on the most commonly ordered items. Soliciting for goods and services must follow the Procurement Process. (Refer to pages 9-10).

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TPASS Training and Certification Programs

Legal Requirement

Government Code §2155.078 states, in part:

"The commission shall establish and administer a system of training, continuing education, and certification for state agency purchasing personnel . . . all state agency purchasing personnel, including agencies exempted from the purchasing authority of the commission, must receive the training and continuing education to the extent required by rule of the commission.

Purchasers who have not received their certification cannot award procurements (refer to training and certification chart). In these cases, a certified procurement staff member must review the purchase and certify compliance with state purchasing statutes and rules.

In order to retain their jobs, all purchasers must be certified within the required timeframe. Purchasers are also responsible for attending approved continuing educational classes to maintain certification through CPA.

Other TMD personnel are also required to receive TPASS's purchaser training if they will be representing the agency in a purchasing capacity.

Levels of Certification and Requirements

Certification Renewal and Continuing Education

Certifications are renewed every 5 years. Certified individuals must obtain 120 hours of continuing education (CE), over a 5-year period with no more than 45 hours in any certification year. To meet the CE requirement, CPA encourages certified individuals to obtain at least 24 hours of continuing education per year.

Certification Year – Certification year is defined as one calendar year from the original issue date of certification.

Purchasers' certification and training opportunities are found at the following site:

http://www.cpa.state.tx.us/procurement/training.html

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Table 1: Training and Certification

Requirements			
Purchasing Authority	**Required Training**	**Experience**	**Certification Required**
Zero to $25,000	Texas Basic Public Purchasing classes (BPP) within their first six-months of employment with TMD.	None Required	None Required
$25,000.01 to $100,000	Texas Basic Public Purchasing classes (BPP) and Advanced (APP) Public Purchasing classes (or have the current equivalent certification from a national purchasing association) and pass the CTP exam within eighteen months of TMD employment.	One Year	Certified Texas Purchaser's (CTP) certification
Over $100,000 and RFP's	Texas Basic (BPP) and Advanced (APP) Public Purchasing classes and the Texas Cost and Price Analysis, Negotiations, and Contract Administration (CNC) course (or have the current equivalent certification from a national purchasing association) and pass the CTPM exam within eighteen months of TMD employment.	Three Years	Certified Texas Purchasing Manager (CTPM) certification

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Contract Manager Training and Certification

Contract Managers

Purchasers managing major contracts as mandated by TGC §2262.053 for contracts over $1 million or consulting contracts over $15,000, are required to have Contract manager training.(See page 5) Currently, this requirement pertains only to contracts subject to CPA oversight, not to direct services contracts. For TMD, the following represent "significant contract management duties":

- Coordinates and facilitates the activities of a contract management team.
- Manages contracts using project management tools (i.e., work breakdown structures, GANTT charts, Performance Evaluation and Review Technique (PERT) charts, Critical Path Method (CPM), Microsoft (MS) Project, etc.)
- Prepares and presents reports regarding agency contracts by compiling, reviewing, and analyzing data and reporting to agency management and the Legislature.
- Coordinates the risk assessment process for contract planning and monitoring.
- Mitigates risks by addressing potential threats during contract development.
- Inspects and/or audits contractors to ensure compliance with contract terms and conditions.
- Monitors contractor performance.

TMD management may require other agency staff, having "significant contract management duties" for contracts with a dollar value less than that specified by the law, to obtain some or all of the required training.

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Required Training

CPA is responsible for the Contract Manager Training Program mandated by TGC §2262.053, which contains four (3) levels of required training. Each level consists of one two-day class. The required levels are:

- C**PA Texas Government Contract Management - Two (2) day class (16 hours)**
  Managing a contract after it is awarded can be a highly complicated endeavor. A Contract Manager is responsible for coordinating the processes required for effective contract management. Contract Management is about planning, forming, and administering contracts. This class will provide state contract managers with information on how to include provisions in a contract that hold the contractor accountable for results, monitor and enforce a contract, make payments consistent with the contract; and comply with any requirements or goals contained in the State of Texas Contract Management Guide.

- **CPA Texas Government Project Management - Two (2) day class (16 hours)**
  Contract management and project management are inherently intertwined. This class is designed to provide you, as a state contract manager, with a basic understanding and working knowledge of each discipline's core elements and competencies that are vital to the success of any contract.

- **Negotiation Skills and Strategies Two (2) Day Class (16 hours)**
  The purpose of this workshop is to help contract managers and other government employees learn negotiation skills and strategies. Often government contract managers fail to utilize this important tool in getting the best value for their agency because they do not have the necessary negotiation skills. The workshop contains lecture and discussion; as well as role play exercises and case studies. After completing the workshop, students should be able to go the negotiation table with confidence and come away with a collaborative solution that makes sense for everyone involved.

Certification

Currently there is no certification requirement for contract managers. However, TMD management recommends that you provide documentation of all classes taken to HR. If certification becomes a later requirement, a record of your training will be available in your personnel file.

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CONFLICT OF INTEREST

TEXAS GOVERNMENT CODE §2155.003 .

Under Texas Government Code § 2155.003, a TPASS employee may not have an interest in or in any manner be connected with a contract or bid for a purchase of goods or services by an agency of the state; or in any manner, including by rebate or gift, accept or receive from a person to whom a contract may be awarded, directly or indirectly, anything of value or a promise, obligation, or contract for future reward or compensation. Any individual who interacts with public purchasers in any capacity is required to adhere to the guidelines established in Section 1.2 of the State of Texas Procurement Manual which outlines the ethical standards required of public purchasers, employees, and vendors who interact with public purchasers in the conduct of state business. Entities who are interested in seeking business opportunities with the State must be mindful of these restrictions when interacting with public purchasers of TPASS or purchasers from other state agencies.

I certify that I have read and understand the above statement.

Employee Signature

Date

Printed Name

cc: Personnel File

TGC §2262.004 requires state agency purchasing personnel to disclose certain family relationships with business entities receiving any major contracts (see Section 1.3 Major Agency Contracts). Therefore, all TMD staff who participates in the solicitation, evaluation or the award of a major contract must sign this disclosure statement available at the State Auditor's Office web site: http://www.sao.state.tx.us/Resources/Forms/NepotismDisclosureForm.pdf

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Code of Ethics and Conflict of Interest

A special responsibility is imposed upon all people who are entrusted with the disposition of the state's funds. As purchasing personnel, we are required to perform with the highest integrity while we are constantly being asked to manage more effectively, to secure better economic results, to speed up the process, and to be innovative in accomplishing our mission.

Elected and appointed state officials as well as all state employees are entrusted with the safety and welfare of the citizenry. In return for their confidence in state government, citizens expect that state employees' private interests will not conflict with public business.

The nature of purchasing functions makes it critical that all players in the process remain independent, free of obligation or suspicion, and completely fair and impartial. Maintaining the integrity and credibility of a purchasing program requires a clear set of guidelines, rules and responsibilities to govern the behavior of purchasing employees. TMD has elected to use our oversight agencies Code of Ethics and Conflict of Interests guidance, which can be found online at http://www.window.state.tx.us/procurement/pub/manual/1-2.pdf.

Please read and remember that every person employed by a public purchasing agency should abide by a code of ethics.
Purchasing professionals have the right under law to have any ethics question reviewed by the Texas Ethics Commission. If you wish to learn whether a specific action violates an ethics rule, please contact the Texas Ethics Commission at (512) 463-5800/1-800-325-8506.

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Nepotism Disclosure

TGC §2262.004 requires state agency purchasing personnel to disclose certain family relationships with business entities receiving any major contracts (see Section 1.3 Major Agency Contracts). Therefore, all TMD staff who participates in the solicitation, evaluation or the award of a major contract must sign this disclosure statement available at the State Auditor's Office web site: http://www.sao.state.tx.us/Resources/Forms/NepotismDisclosureForm.pdf

The purchaser must include the original signed forms of all staff participating in the procurement, in any way, in the PO contract file.

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Procurement Process Table

Table 2: Procurement Matrix

$ Threshold	Type Of Procurement	Who	Bids/Awards
$0.01 – $5,000	Commodities: • Delegated** • Automated Information Systems (AIS*)/Telecommunication (Telecom) Purchase	Pricing secured by Program	Remember to include CMBL certified HUB vendors when securing pricing. Pricing should be obtained from CMBL certified HUB vendors at least 2/3 of the time. Pricing may be verbal or written. If verbal pricing is obtained, make note to the file indicating price, the person's name who quoted the price and the date.
$.01 – $5,000	Services: • Delegated** • AIS*/Telecom • Purchase	Pricing secured by Program	Remember to include CMBL certified HUB vendors when securing pricing. Pricing should be obtained from CMBL certified HUB vendors at least 2/3 of the time. Pricing should be written and should include TMD terms and conditions for all service contracts.
$5,000.01 – $25,000	Commodities and Services: • Delegated** • AIS*/Telecom • Purchases through DIR (including Proprietary/Sole Source purchase)	Bids secured by Program	Delegated** – Three (3) informal (verbal or written) bids; Solicit from three CMBL vendors, two (2) of which must be certified HUB vendors. The CMBL printout must reflect the date solicited. AIS*/Telecom – If more than 1 vendor available through DIR, good practice to get more than one (1) quote to compare pricing.
$5,000.01 or more	Emergency Purchase	< $25,000.00 – Bids secured by program. > $25,000.01 – Bids secured by Purchasing and contracting	At least three bids should be obtained whenever possible. Solicit from 3 CMBL vendors, 2 of which must be certified HUB vendors. The CMBL printout must reflect the date solicited.

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$ Threshold	Type Of Procurement	Who	Bids/Awards
$25,000.01 – up	Open Market Purchase of Commodities (including Proprietary/Sole Source purchase)	Bids secured by the Comptroller of Public Accounts (CPA).	CPA will solicit and award bids, based upon specifications.
$25,000.01 – up	AIS*/Telecom purchases, **not** on DIR, or has an approved exemption.	Bids secured by Purchasing and Contracting	Requires a minimum of three (3) formal Requests for Offer / Request for Proposal. Solicit from three CMBL vendors, two (2) of which must be certified HUB vendors. The CMBL printout must reflect the date solicited.
$25,000.01 – $100,000.00	Services	Bids secured by Purchasing and Contracting	PURCHASING & CONTRACTING will solicit and award bid based upon specifications.
$100,000.00 – up	Services	Bids secured by Comptroller of Public Accounts (CPA)	CPA will solicit and award bids, based upon specifications.
$1,000,000.00 – up	Commodities and Services: • Delegated** • AIS*/Telecom • Purchases through DIR (including Proprietary/Sole Source purchase)	> $1,000,000.0 – Bids secured by Purchasing and Contracting	PURCHASING & CONTRACTING will solicit and award bid based upon specifications. Award requires the Adjutant General or Executive Director's signature. The Executive Director will notify the Adjutant General of all contracts with a value of $1 million or more.****

* AIS are used per CPA. DIR uses IT Commodities/Services/Telecommunications

**Delegated Purchase – A purchase made by an agency under the authority of CPA and subject to CPA rules and procedures.

***Emergency Purchase - A situation requiring the state agency to make the procurement more quickly to prevent a hazard to life, health, safety, welfare, or property or to avoid undue additional cost to the state. (TAC 34, Chapter 20, Section 20.32.)

****Prior to solicitation of any contract of $5 million or more, a memorandum concerning any potential issues that may arise in the contract shall be routed for review. If no objection is raised within 5-business days solicitation will proceed.

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Overview of the Procurement Process

A. Definitions

Goods/Commodities

Goods are normally consumable articles such as office supplies or durable items such as furniture or equipment. Commodities/goods are supplies, materials or equipment listed for commodity code class and item numbers 005-898. In most cases a Purchase Order will be issued for Goods/Commodities.

Services

Services are functions performed for the agency by skilled or unskilled labor usually an activity that is intangible, is not stored and does not result in ownership.
Commodity code class and item numbers for service begin and end with 905-998. A Purchase Order or a Contract may be issued for a service.

B. General Roles and Responsibilities

The responsibility for planning and budgeting for new purchases, and for initiating the contract development process, rests with the requesting program. Depending on certain project specific factors, various TMD offices, sections, and divisions have important duties to perform during the procurement development process. These entities include:

HUB Program – has the responsibility to review and evaluate the Historically Underutilized Businesses (HUB) Program and Good Faith Effort (GFE) documents, as well as various solicitation and/or contract documents.

Purchasing & Contracting – Purchasing & Contracting is responsible for managing the agency's procurement processes, for establishing and communicating procurement procedures to TMD organizations, and for ensuring that TMD procurements are made in accordance with State law and TPASS policy.

TMD has assigned a respective Purchaser and/or Contracting Officer to work directly with the requesting programs. Depending on the type of procurement, Purchasing & Contracting has the responsibility to issue bid solicitations, receive vendor responses, assist in the contractor selection process, and issue required Purchase Orders or Contracts.

Payables – has the responsibility to process program approved vendor payments and encumber expenses if required.

Budget – has the responsibility to confirm fund availability.

Legal – has the responsibility to provide legal advice, contribute to the development of contract-related documents (including shell contracts), and review and approve certain contract documents.

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Reimbursements – has the responsibility to request federal reimbursements through the United States Property and Fiscal Office (USPFO), for all respective programs as identified per each of the appendices of the Master Cooperative Agreement (MCA).

Contract Advisory Team – The team created to assist agencies in improving contract management practice's duties by reviewing contracts that have a value of at least 10 (ten) million dollars during the original term of the contract, not including renewals. The team consists of six (6) members, one from each of the following offices: 1) Comptroller of Public Accounts (CPA); 2) Department of Information Resources (DIR); 3) Health and Human Services Commission (HHSC); 4) Office of the Governor; 5) Texas Facilities Commission (TFC); and 6) one member from a small state agency. The Legislative Budget Board (LBB) and the State Auditor's Office (SAO) serve as technical advisors to the CAT.

C. Purchasing Goods and Services

For detailed information on selecting a Procurement Method, refer to the CPA's *Procurement Manual* at www.cpa.state.tx.us/procurement/pub/manual.

General Information

TMD programs purchase consumable and durable goods from the following sources:

- State Surplus managed by Texas Facility Commission (TFC), for a listing of property refers to http://www.texasahead.org/lga/surplus/;
- TIBH Catalog or TCI (items that are not on CPA Term Contracts); and
- Outside vendors, including local, state and federal governmental agencies.

TMD procures goods in accordance with State Procurement methods listed from the State of Texas Procurement Manual.

TMD programs should contact Purchasing & Contracting whenever there are questions about which procurement method to use. Purchasing & Contracting will contact CPA as necessary to make sure that appropriate purchasing processes are followed.

Note: For detailed information on Selecting a Procurement Method, refer to the CPA *Procurement Manual*, Section 2.4 – http://www.window.state.tx.us/procurement/pub/manual/.

State contracts

Annually, CPA solicits and awards contracts to vendors for the sale of goods and services to state and other governmental entities. These contracts are for commonly used items by the state.

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All CPA contracts can be viewed through the CPA's website at www.window.state.tx.us/procurement/contracts/all_term/.

There are instances when goods/commodities/services are available under a state contract may be purchased via another procurement method.

Failure to meet specific needs:

There are times when an item under a contract might fail to meet or satisfy specific agency/program needs. If this occurs, written justification stating exactly why the particular item fails to meet or satisfy those needs. This information must be included by separate memo, a specific waiver form or exemption indicated directly on the purchase requisition. Note: Pricing of goods cannot be used as an exemption on CPA established contracts.

AIS and Telecom Commodities and Services Purchases

Each state agency must purchase Automated Information Systems (AIS)/Telecommunication (Telecom) commodities and/or services through contracts established by the Texas Department of Information Resources (DIR) unless the item is not available through a DIR established contract or a written exemption is first obtained through the DIR.

DIR

Who is DIR? The Texas Department of Information Resources (DIR) provides statewide leadership and oversight for management of government information and communications technology. Since its creation in 1989, when the Texas Legislature enacted Chapter 2054, Texas Government Code (the Information Resources Management Act), DIR's responsibilities and authority have evolved significantly. In 2005, the 79th Legislature (HB 1516) signaled a clear mandate for the state to restructure the roles and responsibilities of agencies for its investment in information and communication technology. DIR has served in a leadership role to facilitate the state's economic competitiveness through its ability to deliver quality information resources commodities and services at the lowest prices and best value for state. This means DIR has the authority per TPASS to create contracts for state agencies to use. These contracts are for IT related goods and services, including computer-based information systems, software applications, computer hardware, and supplies. So you always want to check DIR contracts before we spend a lot of time soliciting for goods and services.

Each TMD Program is expected to anticipate its needs well enough in advance to allow time for the complete procurement process, from submission of orders to actual delivery of goods or services. Processing timeframes for the Purchasing and Contracting section are listed later in this guide, for procuring goods and services not on state contract.

Each TMD Program is expected to comply with agency policy ensuring that Historically Underutilized Businesses (HUBs) are provided full and equal opportunities to participate in TMD purchases of goods and services.

The procurement of goods and services is governed by, but not limited to, the following guidelines and regulations:

- Texas Constitution;
- General Appropriations Act;

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- Texas Family Code;
- Texas Government Code;
- Texas Administrative Code;
- Texas Labor Codes;
- Texas Human Resources Code;
- TMD Purchasing and Contracting Procedures;
- Texas Health and Safety Code; and
- Texas Comptroller of Public Accounts (CPA) – authorized (delegated) purchases.

Please note the CPA has statutory authority to purchase, or to approve the purchase of, most goods and services required by state agencies. If they do not approve the goods or services directly, they may audit state agencies to confirm all purchases are processed according to the Procurement Method. CPA may also delegate purchasing authority to state agencies, as they have done with the TMD. Please refer to the thresholds.

CPA - Exempt Purchases

Certain goods and services may be exempt by specific statute, and state agencies may be authorized by those statutes to procure these goods and services without CPA approval or assistance. It is TMD's position to encourage using the competitive bidding process whenever possible.

Examples of CPA-exempt purchases include:

- Consultant or professional services
- Goods or services from other state agencies or local governments
- A list of CPA-exempt purchases is addressed later in this guide.

Delegated Purchases

Delegated purchases are procurements in which the authority to manage the competitive process is delegated to the agency by CPA rule or by statutory exemption. This procedure does not apply to mandatory state use purchasing programs/requirements that can be satisfied by other purchasing methods specifically authorized by state statutes. When making a delegated purchase, the agency, not CPA, solicits the required bids. Refer to CPA's *Procurement Manual*, Section 2.4.

Open Market Purchases

An open market purchase is the purchase of a good or service made by soliciting from any available source. The open market purchase procedure is authorized by Texas Government Code 2155 and 2156. Agencies have the authority to purchase commodities with an estimated purchase price not exceeding $25,000 and services not exceeding $100,000 for requirements not available on a statewide contract. For requirements exceeding the amounts noted above, the CPA solicits bids from vendors and purchases are made to those submitting the lowest and best

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bid(s) meeting specifications to include any best value determinations if specified. Refer to CPA's *Procurement Manual*, Section 2.8.

Emergency

Emergencies occur as the result of unforeseeable circumstances and may require an immediate response to avert an actual or potential public threat. If a situation arises in which compliance with normal procurement practice is impracticable or contrary to public interest, an emergency purchase may be warranted to prevent hazard to life, health, safety, welfare, property or to avoid undue additional cost to the state. Refer to CPA's *Procurement Manual*, Section 2.18.

Service

For detailed information on Selecting a Procurement Method, refer to the CPA's Procurement Manual at: http:/www.cpa.state.tx.us/procurement/pub/manual/.

a. **Services under state contract**
Examples of state contracted services may include temporary personnel services and overnight, second day and ground delivery services. In order to verify if a service is delegated to the agency along with other specific requirements, please refer to "Selecting a Procurement Method" in the CPA's *Procurement Manual*, Section 2.4.

b. **Exempt services**
There are certain services exempt from CPA authority and a few are listed below:

- Services regulated by federal law or specific state procurement law;
- Professional and Consultant services;
- Utilities – water, gas, electricity, and local phone service if not covered under a DIR contract (long distance is not considered a utility); and
- Interagency/Inter-local agreements.

Though CPA approval may not be required for agency procurement of these types of services, state agencies must adhere to statutory provisions for acquiring certain services.

D. Historically Underutilized Businesses (HUBs)

CPA administers the HUB Program in accordance with TGC §2161 and 34 Texas Administrative Code (TAC). State agencies are to take initiatives to eliminate barriers for equal economic opportunities in state purchasing for HUBs. TMD's commitment to the HUB Program is:
"To encourage and develop the ability of HUB enterprises to actively compete for TMD contracts, to increase the agency's awareness of such businesses, and to ensure fair and competitive participation of HUBs in the agency's procurement process."
TMD will make a good faith effort in assisting HUBs to receive the percentage, specified in the categories below, of the total value of all contract awards. The following are categories in which TMD has procurement activity and the state goals.

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Table 3: State HUB Goals

State HUB Goals	
Category	**State Goal**
Special Trades	57.2%
Professional Services	20.0%
Other Services	33.0%
Commodity Purchases	12.6%
Total	**122.8%**

TMD HUB Coordinator must review any planned purchase that may total $100,000.00 or more for potential subcontracting opportunities. For any purchase that is determined to have subcontracting opportunities, vendors must submit a HUB subcontracting plan. If no HUB subcontracting opportunities exist, the purchaser must include in the PO file.

E. Procuring Goods & Services

Purchasing Category Codes (PCCs), applicable dollar thresholds, procurement requirements and estimated processing timelines can be located later in this guide.

Processing times for the purchase of goods and/or services are normally determined by the dollar threshold, procurement type or method, number of bids required, and the complexity of the purchase.

General

The (purchasing) requisition is used to identify and initiate a Program's need for a good and/or service. All requisitions are to be submitted by utilizing IEMS. Each requisition is reviewed by an assigned purchaser and/or contracting officer for accuracy and completeness. If the requisition submitted is incomplete, the requestor may be contacted for clarification or requisition returned to the requestor for correction. Planning your procurement requirements is the key to a successful and timely purchase.

These deliverables are not a substitute for the advice of an attorney.

Authority

Procurement (and payment) of goods and/or services are governed by, but not limited to, certain statutes, rules, policies and procedures:

- Texas Government Code;
- General Appropriations Act;
- Uniform Grant and Contract Management Standards;
- Comptroller of Public Accounts (CPA) Purchasing Policies and
- Procedures Guide;
- CPA's *Procurement Manual*;
- CPA's *Contract Management Guide*; and
- Master Cooperative Agreement (MCA)

Whenever Purchasing and Contracting is asked to process a procurement which appears to have been processed without complying with the TMD and/or other statutory requirements, a Non-Compliant Memo may be issued with the determination as to which procedures appear to not have been followed, and if the procurement may legally be made and whether if proceeding with the procurement is in the best interest of the State. Procurement requirements are in place to ensure that the agency follows State of Texas procurement rules and guidelines as well as purchasing and contracting best practices. The Agency's compliance with those laws, best practices and its own procedures are monitored by the State Auditor's Office (SAO), the Comptroller of Public Accounts (CPA) and other state and federal oversight entities (and are sometimes the subject of legislative inquiry).

Failure to maintain a certain level of audit compliance could result in withdrawal of the agency's delegated authority to make purchases. Common pitfalls to avoid (this is not an exhaustive list):

- Requisition information has not been submitted and approved through IEMS prior to any purchases being made;

- Dollar thresholds have not been verified (prior to purchasing) and the appropriate Program places an order;

- All appropriate approvals and/or justification letters or memos are not attached as applicable;

- Attend training without a purchase order;

- Causing the receipt of goods and/or services without the appropriate purchase order and/or contract being issued first (this includes phoning, faxing or e-mailing); and

- Paying with ProCard for goods and/or services outside the TMD's set limits.

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F. Procuring Goods and Services

Refer to the table below for a breakdown on dollar threshold requirements and processing times:

Table 4: Procurement Processing Timelines (Business/Work Days)

Purchase Category Code (PCC)	Description	$ Threshold	Requirement	Purchasing & Contracting Days
A	Automated Term Contracts	Any $ amount	Purchasing & Contracting processes through TPASS	3 – 5
C	Non-Automated Term Contracts **and TPASS Managed Contracts**	Any $ amount	Purchasing & Contracting processes through TPASS	3 – 5
D	IT Commodities/Services not available on DIR Contracts	• $.01 – $25,000.00 • Above $25,000.00	All bids/bid tab summary Performed by program Purchasing & Contracting bids Advertisement ESBD = 14 – 21 days (or longer)	14 – 21 35 – 45
E	Delegated commodities/services	$.01 – $5,000.00	All bids/bid tab summary Performed by program Purchasing & Contracting processes	3 – 5
F	Delegated commodities	$5,000.01 – $25,000.00	All bids/bid tab summary Performed by program Purchasing & Contracting bids	14 – 21
G	Open Market Commodities	Above $25,000.00	CPA bids: a. Process to CPA = 7 days b. CPA receives/bids = 45 days c. TMD reviews bids/responds = 10 days d. Process paperwork after award = 3 days	65

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Purchase Category Code (PCC)	Description	$ Threshold	Requirement	Purchasing & Contracting Days
I	DIR Contracts	$.01 – No ceiling	All bids/bid tab summary performed by program and/or Purchasing & Contracting from the DIR Approved Vendors List	7 – 14
K	Publications directly from Publisher	• $.01 –$25,000.00 • Above $25,000.00*	All bids/bid tab summary performed by program and/or Purchasing & Contracting	14 – 21 35 – 56
Q	Services	$5,000.01 –$25,000.00	All bids/bid tab summary performed by program	7 –14
X	TXMAS	• $.01 – $5000.00 • $5,000.01 – $25,000.00 • Above $25,000.00*	All bids/bid tab summary performed by program and/or **Purchasing & Contracting**	7 – 14 14 – 21
S	Services	• $25,000.01 – $100,000.00* • Above $100,000.00	Purchasing & Contracting bids Purchasing & Contracting process through TPASS (bids)	45 – 60 65 – 180
T	Emergency	• Above $5,000.00 • Above $25,000*	All bids/bid tab summary performed by program up to $25,000.00. (under $5,000 not considered an emergency)	Priority
	Document type 9 (Exemptions)	• Any $ amount • Above $25,000*	Purchasing & Contracting processes	7 – 14

Note: Proprietary – add additional 21 days for routing proprietary letters through program

*Award/Advertisement posted to the Electronic State Business Daily (ESBD)

**These timelines will be adhered to, contingent all supporting documentation is submitted with requisition.

*** Construction and Service Contracts are excluded from above timelines.

**** The above is contingent upon work volume.

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G. Deadlines for State and Federal end of Fiscal Years

All requisitions are required to be entered into IEMS approved and budget coded no later than fourteen business days prior to the end of the respective fiscal years.

Note:

*Examples of the end of the State Fiscal Year (SFY) FY15, FY16 and FY17:

Monday, August 31, 2015 is the end of the SFY and the requisitions should be approved in iEMS no later than Thursday, August 13, 2015.

Wednesday, August 31, 2016 is the end of the SFY and the requisitions should be approved in iEMS no later than Friday, August 12, 2016.

Thursday, August 31, 2017 is the end of the SFY and the requisitions should be approved in iEMS no later than Monday, August 14, 2017.

* Examples of the end of the Federal Fiscal Year (FFY) FY15, FY16 and FY17:

Wednesday, September 30, 2015 is the end of the FFY and the requisitions should be approved in iEMS no later than Friday, September 11, 2015.

Friday, September 30, 2016 is the end of the FFY and the requisitions should be approved in iEMS no later than Tuesday, September 13, 2016.

Friday, September 29, 2017 is the end of the FFY and the requisitions should be approved in iEMS no later than Tuesday, September 12, 2017.

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Procurement Legal Requirements

A. Miscellaneous

Taxes

The State is exempt from all state and city sales tax.

Excluded Parties List System (EPLS) and List of Specially Designated Nationals

The EPLS must be searched (see link below) before completing any procurement transaction, regardless of funding stream, and a printed copy of the search results must be included in the PO file. http://www.epls.gov/epls/search.do?multiName=true

Also, in compliance with Executive Order #13224 - "Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit or Support Terrorism," state agencies are responsible for ensuring they do not enter into transactions or issue payments to those individuals or organizations identified in the Office of Foreign Assets Control list of Specially Designated Nationals (SDN) and Blocked Persons at:

Electronic State Business Daily (ESBD)

Go to http://www.ustreas.gov/offices/enforcement/ofac/sdn/.

Required Vendor Affirmation

In order to qualify to receive a contract award, a vendor agrees that any payments due under the contract will be applied towards any debt, including but not limited to, delinquent taxes and child support that is owed to the State of Texas.

Major Agency Contracts

The state Contract Management Guide, as published by the CPA and the Council on Competitive Government (CCG), can be found at the following link and TMD staff should use this as a resource to plan, procure and manage all contracts:
http://www.window.state.tx.us/procurement/pub/contractguide/

These deliverables are not a substitute for the advice of an attorney.

Contract management is the coordination and management of five core processes:

- Planning – Identify contracting objectives and contracting strategy.
- Procurement – Fairly and objectively select the most qualified contractors.
- Rate/Price Establishment – Establish process that are cost-effective and aligned with the cost of providing the goods and services.
- Contract Formation – Ensure the contract contains provisions that hold the contractor accountable for producing desired results.
- Contract Oversight – Monitor and enforce the terms of the contract.

TGC §2262.001(4) defines a ***major contract*** as one that has a value of at least one (1) million dollars during the original term of the contract, excluding any renewal periods and under which a vendor will perform or manage an outsourced function or process.

Major contracts require the Adjutant General or Executive Director's signature.

TGC §2254.021 defines a ***major consulting contract*** as one where the value of the contract is expected to exceed $15,000.00.

Any purchase request that will result in a major contract that fits either definition must go through an approval process by the Contract Advisory Team (CAT). The CAT consists of representatives of the CPA, DIR, HHSC, TFC, Office of the Governor and one member from a small state agency. In addition, both the State Auditors' Office and the Legislative Budget Boards will provide technical assistance to the CAT.

All major contract solicitation document(s) are submitted to the CAT by utilizing the Contract Advisory Team Review and Delegation (CATRAD) on-line web application which can be found via a web portal located at: http://www.window.state.tx.us/procurement/res/CAT/catrad/. In addition to sending the actual solicitation documents, Purchasing must provide a brief submission form that summarizes the required contract solicitation.

TMD has the authority to issue the solicitation if a response is not received from the CAT within thirty calendar days. Should the CAT request the agency submit a more complete solicitation draft or require clarification, CAT has thirty additional days to conduct its review. The CAT review is required in addition to any and all other purchasing and review requirements listed within this manual.

CATRAD State Agency Recommendations -- State agencies are required, under Texas Government Code, Section 2262.101(d), to:
• comply with the CAT's recommendations on solicitation and contract documents submitted for mandatory CAT review; or
• submit a written explanation to the CAT regarding why a specific CAT recommendation is not applicable to the contract under review.

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Purchasing & Contracting reviews all solicitations and forwards any that may be of risk to the agency, regardless of value, to the TMD's Legal Counsel for review and possible referral for higher level reviews.

TMD will post all major contracts and major consulting contracts on the Legislative Budget Board's website.

B. Determining the Class and Item from the NIGP Code

The code is a set of numbers, which numerically identifies the commodities and services you wish to purchase. Purchasing & Contracting and/or the Programs are required to enter the Class- Item number and if applicable the term contract Commodity Codes in the description field on all requisitions, and ProCard orders. This number identifies the commodities and services, and helps to locate potential vendors on the CMBL.

Go to CPA's website at http://www.window.state.tx.us/procurement/.

1. Scroll down the page to the heading, "Requisition Tools";

2. Click on the "NIGP Commodity Book" under this heading. A direct link to the book is http://www.window.state.tx.us/procurement/tools/comm- book/;

3. Click on the "Alphabetical Index of Commodity Book". This will bring up the screen with the title "CPA NIGP Commodity Book Alpha Index". Either click on the "Alpha Letter" that applies to the item you are purchasing, or click on the "Whole Alpha Index";

4. Press "Control F" for a shortcut to find the item you are procuring;
5. In the pop-up screen, enter the "Keyword" of the item (i.e., paper shredder). The item will be highlighted on your screen, allowing you to see the class and item numbers (i.e., Class 600, Item 82). If this does not happen, you will have to search again;

6. Once you find the item, go back to the "CPA NIGP Commodity Book Alpha Index" page and click on "NIGP Code Numeric Index" which will bring up the "NIGP Commodity Book";

7. The 1st column is the "Class", click on the Class you found your item under;

8. When the Class table opens, find the item. If the Item # has an asterisk (*) next to it, this item may contain AIS/Telecom components, refer to III.I. for details.

Note: For the most updated info please use the whole commodity book.

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C. Processes to Follow for Every Type of Purchase

Every purchase requires similar procedures to be followed when making a purchase and this section addresses these procedures.

The requestor:

- Notifies the program manager (PM) that goods or services are needed.
- Provides the PM with detailed specifications/scope of work of the goods or services and applicable terms and conditions, including any testing requirements and the delivery date desired.

Note: TMD Programs must be clear and concise when writing specifications for purchases. Purchasing & Contracting can provide assistance in developing specifications.

Since the Prompt Payment Act, which requires automatic inclusion of interest, TMD programs must include the following clause when writing specifications/SOW if any testing period will be required:

"The goods or materials ordered will be tested upon receipt. Testing will take not more than ____ working days. Payment will be made within 30 days after tests have been completed and goods or materials are found to meet specifications or the day on which the correct invoice for goods or materials was received, whichever is later."

Note: This clause is not necessary if testing is not required.

The requestor or PM:

1. Determines the cost of the goods or services.

2. Ensures that funds are available within the Program's budget to purchase the goods.

The requestor:

1. Prepares a requisition, entering all pertinent information (i.e., Class- Item or commodity code number, description, quantity, price, delivery location, contact information, furniture specifications: seat color/stain/fabric material selections etc.). Also, please provide a brief description in the description field as to why you are making the purchase.

   Note: For any controlled item, please note the respective name of the associated employee.

2. Please make sure all approvals are obtained before forwarding to Purchasing & Contracting.

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3. If the procurement is for conventional furniture (desks, credenzas, computer stands, chairs, file cabinets, and conference tables, etc.), an e-mail or memo from the program area must state that they have contacted inventory for surplus furniture and none was available to show due diligence.

4. Forwards the requisition with all attached documentation (i.e., quote, specifications, Scope of Work, approval e-mails, etc.) to Purchasing & Contracting.

Budget

1. Check for appropriate IEMS approvals (i.e., 1st/2nd level approvals)

2. Ensures funds availability, and then forwards the requisition to Purchasing & Contracting.

Purchasing & Contracting

1. Audits the requisition for completeness (i.e., class and item, commodity code number, delivery/contact information description, quantity, price, etc.), necessary approvals, and backup documentation, if applicable.

2. Contacts the appropriate program area if additional information is needed. It is the responsibility of the program area to follow up with Purchasing & Contracting within two (2) business days. If a response is not received within two (2) business days the requisition will be returned to the program.

3 . Purchasing & Contracting will process the PO according to purchasing procedures.

   Note: The following apply to all purchases of goods: Procurements will only process requisitions entered into IEMS or submitted on a Requisition form 34, as appropriate.

Payables

Encumbers funds over $25,000 and prepares the voucher.

Receipt of purchases

1. Purchases are usually delivered 10 – 60 working days after the vendor has received the PO. However, the delivery time may vary depending upon the type of product ordered (i.e., some furniture purchases may take longer).

2. All goods ordered should be delivered directly to the respective program.

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Upon Delivery of the Goods

1. The program receiving the goods signs and dates a copy of the PO to confirm that the correct goods (item and quantity) were delivered and are in good condition.

2. Any discrepancies should be handled by the program.

3. The Program receives the order in the purchasing system and forwards a copy of the signed PO and all supporting documentation to Budget.

4. An electronically signed PO (receiving ticket) must be prepared by the program area and sent with all supporting documentation to Payables address in order to process payment.

5. If discrepancies are discovered by the end-user after receiving the goods, he/she must notify Purchasing & Contracting immediately via e-mail. Immediate notification is important because of time limits for returns and exchanges set by vendors.

6. Send e-mail to Purchaser of exemplary or deficient vendor performance.

   Note: All procurements $25,000 or greater require mandatory vendor performance to be filed.

Return or exchange of goods

1. All goods must be returned or exchanged through coordination with Purchasing & contracting.

2. Purchasing & Contracting must be notified prior to any exchanges or returns. No substitutes may be accepted without Purchasing & Contracting's prior approval.

3. Purchasing & Contracting will document the return or exchange in the file, take any appropriate action with the vendor, and file a Vendor Performance Form with CPA, as necessary.

D. Managed Term Contracts

Managed term contracts are established by TPASS, the Council of Competitive Government (CCG) or the Strategic Sourcing Division for unique items for specific entities or for distinct ordering processes.

Purchases should use the contract details links below to view related terms and conditions, pricing sheets and other supporting documents that will aid them in purchasing directly from awarded contractors.

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Purchasing & Contracting should list PCC C on their internal purchase order per *Procurement Manual 2.61* (PDF). For CCG contracts, please use Doc Type 9 and the applicable legal cite on the purchase order.
To determine geographic regions for supply and delivery, view a List of Counties or a List of Cities by Zone, Area or Highway District.

CPA contract purchases (automated, non-automated, and managed/CCG state contracts).

The process for ordering goods under state contract follows:

Requestor/Program

1. Determines if the goods are on state contract by checking the CPA TxSmartBuy Online ordering system website http://www.window.state.tx.us/txsmartbuy/ and the CPA awarded term contract website http://www.window.state.tx.us/procurement//cat_page/ using the following steps:

2. Identify the Class-Item, as referenced previously above. Go to the CPA Procurement screen at http://www.window.state.tx.us/procurement/.

3. Click on "All Term Contracts". The list of CPA Term Contracts will appear.

4. Click on the class number and the applicable category.

5. Click on "Details" link in blue.

6. *TXSMARTBUY Ordering Instructions:*

   a. Create Wish List and attach to requisition.

   b. Separate requisitions for multiple delivery locations.

   c. Get freight quotes on all applicable order.

7. Prepares and submits the requisition in IEMS.

8. Obtains all required approvals for the purchase.

9. Forwards the requisition with all attached documentation to Purchasing & Contracting.

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Purchasing & Contracting

1. Audits the requisition for completeness (i.e., class and item, commodity code number, description, quantity, price, contact information, etc.), necessary approvals, and backup documentation, if applicable.

2. If the goods are on an automated state contract, the order is issued and awarded via TXSMARTBUY. A copy of the PO is forwarded to the program.

3. If the non-automated contract is not in TXSMARTBUY system then Purchasing & Contracting issues the PO, submits it directly to the vendor, and sends a copy of the PO to CPA and the program.

E. Delegated Purchases

Delegated purchases require choosing a vendor who submits the lowest and best bid based on criteria stated in the solicitation. Refer to Para. I , Best Value guidelines.

Note: Purchasers are required to independently ensure whether the vendor is responsive and responsible by verifying vendor qualifications (i.e., checking references, validating credentials) when possible.

For goods estimated to cost $5,000 or less

Requestor/Program

1. Identifies the Class-Item.

2. Must obtain verbal or written pricing. Verbal quotes must be documented to the file to include date, amount, and vendor contact name and phone. It is TMD policy that these goods must be purchased from CPA certified HUBs (Historically Underutilized Businesses) when possible. Lists of HUBs can be found at the CPA website http://www.window.state.tx.us/procurement//cmbl/cmblhub.html by utilizing the appropriate class and item. The CMBL printout must reflect the date solicited. Note: May also include the District in your search.

3. If more than one (1) bid is obtained, records all information received from the vendors onto a Bid Tabulation Summary, and suggest a vendor. Must provide a written explanation whenever a vendor placing the lowest bid is not selected.

4. Determine if funds are available for the purchase based upon TMD cost estimates or quote/bid provided by vendor(s).

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5. Prepares a requisition, in IEMS or a Req form 34, or uses the agency ProCard, if it is within the ProCard guidelines.

6. Obtains all required approvals for the purchase.

7. Forwards the requisition with all attached documentation to Purchasing & Contracting.

Purchasing & Contracting

1. Audits the requisition for completeness (i.e., class/item, commodity code, delivery/contact information, description, quantity, price, etc.), necessary approvals, and backup documentation, if applicable.

2. Uses the information on the requisition to complete a PO, attaches the standard terms and conditions if needed--to be sent by the requestor or program, to the vendor.

For goods estimated to cost $5,000.01– $25,000

Requestor/Program

1. Identifies the Class-Item.

2. Prepares a list of vendors from the Centralized Master Bidders List (CMBL) according to the class and item number. The CMBL printout must reflect the date solicited. Note: May include the District in your search.

3. Obtains three (3) informal (verbal or written) bids from at least three (3) active vendors on the list.

4. State HUB statutes require that at least two (2) of these vendors must be HUB vendors. Lists of HUBs can be found at the CPA website: http://www.window.state.tx.us/procurement//cmbl/cmblhub.html.

5. Non-CMBL vendors must submit a written request on company letterhead to obtain information regarding any bid over $5,000.

6. Request three (3) informal (verbal or written) bids by contacting the vendor(s).

7. Record all information received from the vendors onto a Bid Tabulation Summary and suggests a vendor. Must provide a written explanation whenever a vendor placing the lowest bid is not selected, when fewer than three (3) bids are taken, or when bids are not secured from certified HUB vendors.

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8. Determine if funds are available for the purchase based upon TMD cost estimates or quotes/bids provided by the vendors.

9. Prepare a requisition.

10. Obtains all required approvals for the purchase.

11. Forwards the requisition with all attached documentation to Purchasing & Contracting.

Purchasing & Contracting

1. Audits the requisition for completeness (i.e., class/item, commodity code, description, quantity, price, contact information, etc.), necessary approvals, and backup documentation, if applicable.

2. Uses the information on the requisition to complete a PO, attaches the standard terms and conditions if needed- -to be sent by the requestor or program, to the vendor.

F. Emergency Purchases

When an emergency arises for the purchase of goods or services, TMD is delegated the emergency purchase. The emergency purchase process provides for the expedited procurement of goods or services without the strict bid solicitation requirements of some purchases.

The emergency purchase process should be used sparingly and/or when an emergency arises. TMD programs are highly encouraged to consult with Purchasing & Contracting before they initiate an emergency purchase. **Please note the definition** of "Emergency purchases" from the Procurement Manual.

Note: Failure to properly plan ahead does not constitute an emergency.

1. For purchases of more than $5,000, the program area must submit an emergency justification memo and a Justification for Emergency Requisition form to Purchasing & Contracting, with the following information:

   a. An explanation of the emergency and/or what caused the emergency situation.

   b. A statement of the financial loss or operational damage that would occur if the need is not satisfied immediately.

   c. A statement explaining why the need was not or could not be anticipated in time to use routine purchasing procedures.

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d. The justification must be signed by either the Executive Director or Purchasing Manager. The Executive Director may delegate signature authority to a Program Director or Section Manager under certain circumstances. Written notice of authority delegation must be sent to the manager of Purchasing & Contracting.
e. To begin the emergency purchase process, the requestor/Program must forward a completed requisition with approvals, justification memo and any other supporting documentation to Purchasing & Contracting.

f. The requestor/program should still attempt whenever possible, to obtain three (3) written bids from CMBL vendors (two of which must be HUBs), following the procurement process, and submit the bid information, payment documentation, and written justification for the emergency purchase through the normal process.

The CMBL printout must reflect the date solicited.

2. Emergency purchases of $25,000 or more must be posted (for informational purposes) on the ESBD by the appropriate purchaser.

3. After the PO is issued, Purchasing & Contracting will maintain all the documents in the purchasing file in case of an audit.

4. All paperwork must be submitted to Purchasing & Contracting within seven (7) working days of the date the emergency procurement was made.

G. Proprietary Purchases

Proprietary – When an agency needs to purchase a non-state contract item costing $5,000 or more and the specification limits consideration to one manufacturer, one product, or one service provider but is available from many sources.

The proprietary purchase process should be used sparingly and/or when this type of purchase **truly** exists. TMD organizations should consult with the Purchasing & Contracting prior to beginning any proprietary purchases. The Purchasing & Contracting staff may consult with Legal as appropriate.

Requestor/Program

1. Identifies the Class-Item.

2. Prepares a requisition and a justification memo with the following information:
   Memo is:

   To: Purchasing & Contracting Manager

   From: Program Director

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Thru: Executive Director

- A statement listing the needs and requirements that can only be satisfied by one product or vendor.
- A statement listing the unique properties or characteristics of the product that fulfill the requestor's requirements.
- A statement indicating why the product is only available from one vendor (i.e., copyright, patent, or other practice).
- The reason competing products are not satisfactory.
- Any other pertinent information and documentation.

4. Executive Director signature is required on justification memo.
5. Forward a completed packet through the requisition approval process to Purchasing & Contracting.

Purchasing & Contracting

For purchases under $25,000

1. Audits the requisition for completeness (i.e., class/item, commodity code, description, quantity, price, etc.), necessary approvals, and backup documentation, if applicable.
2. Follow the applicable process outlined in Para. I Delegated Purchases.
3. A formal letter on agency letterhead is not necessary; however, a justification memo must be approved by the Purchasing & Contracting Manager and signed by the Executive Director or his/her designee and placed in the file.

For purchases of $25,000 or more

1. Follow the applicable process outlined in Para. I, Delegated Purchases.
2. Prepares a formal justification letter and sends to Purchasing & Contracting Manager for approval.
3. Sends the letter and the requisition packet to the Executive Director or an authorized representative (Deputy Director) for signature.
4. Executive Director or authorized representative (Deputy Director)

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reviews all forms and documentation.

5. Must sign the proprietary justification letter to approve the purchase.

6. Returns all the forms and documentation to Purchasing & Contracting.

   Note: Only the Agency Head has the authority to delegate signature privilege on proprietary justification letters. This should be done in writing and filed through Purchasing & Contracting with CPA. At this time, only the Executive Director and Deputy Director have been given approval to sign proprietary justification letters. Additional names/signatures may be added at the discretion of the Agency Head.

For purchases $25,000 or greater

Processed by CPA.

H. Open Market Purchases

State agencies may procure goods that are not available on state contract and are delegated to TMD from CPA. The process for procuring non-state contract items through CPA participation is the same for all programs.

Open market purchases require choosing a vendor who submits the lowest and best bid based on written criteria included in the solicitation, Para. I Best Value guidelines.

CPA-directed, open market purchase process usually occurs within seven (7) business days from time of receipt by Purchasing & Contracting. CPA may take up to eight (8) weeks to process an order.

Delivery of the purchased goods may require from 5 to 180 days, depending upon the specifications, type of product, and vendor.

Requestor/Program

1. Identifies the Class-Item.

2. For purchases that total less than $25,000, follow the applicable process outlined in, Section E, Delegated Purchases.

For purchases of $25,000 or more (could take up to 3 months from receipt to award)

1. Coordinates the development of detailed specifications for the purchase, obtaining assistance from the end-user, Purchasing & Contracting, or other agency organizations as necessary.

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2. Identifies the Class-Item.

3. Prepares a requisition.

4. Obtains all required approvals for the purchase.

5. Forwards the requisition with all attached documentation to Purchasing & Contracting.

Purchasing & Contracting

1. Audits the requisition for completeness (i.e., class/item, commodity code, description, quantity, price, etc.), necessary approvals, and backup documentation, if applicable.

2. Uses the specifications contained on or attached to the requisition to develop an Open Market Requisition.

3. Sends the Open Market Requisition and attachments to CPA to be processed. Note: CPA may elect to delegate the purchase back to TMD.

I. Best Value Guidelines

State agencies are encouraged to use best value practices when making purchases. For a purchase made through competitive bidding, the state agency making the purchase must specify in the IFB the factors other than price that will be used to determine which bid offers the best value for the State. Factors that may be considered in the award include:

- Installation costs;
- Life cycle costs;
- The quality and reliability of the goods and services; and
- The delivery terms.

Indicators of probable vendor performance under the contract:

- Past vendor performance;
- Vendor's financial resources and ability to perform;
- Vendor's experience or demonstrated capability and responsibility; and
- Vendor's ability to provide reliable maintenance agreements and support.

The cost of any employee training associated with a purchase.

The effect of a purchase on agency productivity.

These deliverables are not a substitute for the advice of an attorney.

Other factors relevant to determining the best value for the State in the context of a particular purchase.

J. AIS/Telecom Commodities and Service Purchases

TMD shall procure information resource technology equipment/services from DIR as implemented by CPA. Orders will be placed by Purchasing & Contracting after considering HUB participation and agency standards, with the exception of ProCard orders. CPA has developed guidelines for state agencies to follow which can be found at http://www.window.state.tx.us/procurement/pub/manual/2-12.pdf.

The law governing Automated Information Systems (AIS)/Telecommunication (Telecom) purchasing is H.B. 1516. This legislation requires state agencies to procure AIS/Telecom purchases through DIR. Go to http://www.dir.state.tx.us/commodities for more information.

AIS/Telecom items will be defined as all hardware, software, and technology services designated by the CPA.

If an AIS/Telecom purchase that meets your specifications is available through TIBH or TCI, preference is to be given to them before using the DIR contracts.

If an AIS/Telecom purchase is not offered through TIBH or TCI, state agencies are mandated to use the DIR contracts. These purchases will be made through DIR contracts unless DIR does not have a contract for an IT commodity class or item.

There is a DIR Blanket Exemption for the DIR IT Commodity Purchasing Program. Refer to http://www.dir.state.tx.us/commodities/program.htm for more information. An Exemption is requested and granted by DIR.

AIS/Telecom purchases are variants of state contract procurements for Automated Information Systems (AIS), some telecommunication equipment, and related services.

Procurement of certain kinds of AIS/Telecom require coordination through Purchasing & Contracting.

Repairs on fax machines, printers, etc. are considered an AIS/Telecom service, so this service is to be obtained from a DIR contract.

The process for procuring computer hardware and software is often more complex than for most other goods. It is strongly advised that Programs consult their Information Technology (IT), for assistance prior to initiating the purchase requests. These staff members will assist requesters in developing specifications for the purchases and in determining the best product/vendor for meeting any existing or anticipated requirements.

These deliverables are not a substitute for the advice of an attorney.

Determining if a good or service is AIS/Telecom

1. Verify whether or not the goods or service is AIS/Telecom, indicating that it must be purchased through a DIR contract. The following steps will help make that determination.

2. Obtain the class-item code for the desired product or service from the CPA website at http://www.window.state.tx.us/procurement/, Be sure and use the NIGP Commodity Book.

3. If the product or service is designated as AIS/Telecom i.e., marked with an asterisk (*), refer to DIR's IT Commodity Purchasing Program. If the product or service is not designated as AIS/Telecom, use another procurement method.

4. Go to DIR website at http://www.dir.state.tx.us/servlet/dirStore and search the DIR website for that AIS/Telecom class-item code.

5. If the search produces a list of contracts for that class-item code, the product or service is on the DIR IT Commodity List and must be procured through a DIR contact unless an exemption is requested by the agency and granted by DIR. Exemptions take up to 30 days to process per DIR.

6. If the search results in the message "There are currently no DIR Cooperative Contracts...", the product or service is not available through a DIR contract. Print out that page and attach it to your requisition. The agency should proceed with the procurement through another procurement method.

These deliverables are not a substitute for the advice of an attorney.

K. Process for Ordering AIS/Telecom Goods and Services Through DIR Contracts

Purchases of any amount

Requestor/Program

1. Identifies the Class-Item.

2. Obtains a written quote from the DIR contracted vendor form based on the class and item number of the products or services being procured.

3. Prepares a requisition and references the DIR Contract #. Attach the following:
   a. Quote from vendor which must reference the DIR Contract#.

   b. DIR contract page proving the vendor is on the DIR contract referenced on the quote.

   c. DIR pages proving the vendor has the product/service being provided.

   d. DIR pricing pages, if applicable. Vendor cannot quote higher than contract pricing but can offer lower pricing.

4. Obtains all required approvals for the purchase.

5. Forwards the requisition with attached documentation to Purchasing & Contracting.

Purchasing & Contracting

1. Audits the requisition for completeness (i.e., class/item, commodity code, description, quantity, price, etc.), necessary approvals, and backup documentation, if applicable.

2. Reviews the requisition and attachments for completeness.

3. Uses the information on the requisition to complete a PO, attaches the standard terms and conditions if needed- -to be sent by the requestor or program, to the vendor.

These deliverables are not a substitute for the advice of an attorney.

L. Process for ordering AIS/Telecom Goods and Services *not* on DIR Contract

Purchases of $5,000 or less

Requestor/Program

1. Identifies the Class-Item.

2. If DIR has a contract for the class-item of your procurement but the contract does not offer the product or service you are procuring, and your procurement does not fall under a DIR Blanket Exemption, obtain an exemption from DIR.

3. Must obtain verbal or written pricing, Verbal quotes must be documented to the file to include date, amount, and vendor contact name. Must obtain written pricing for services. It is TMD policy that these goods must be purchased from CPA certified HUBs (Historically Underutilized Businesses) when possible. Lists of HUBs can be found at the CPA website http://www.window.state.tx.us/procurement//cmbl/cmblhub.html by utilizing the appropriate class and item. May also include the District in your search. The CMBL printout must reflect the date solicited.

4. If more than one bid is obtained, records all information received from the vendors onto a Bid Tabulation Summary and suggest a vendor. Must provide a written explanation whenever a vendor placing the lowest bid is not selected.

5. Determines if funds are available for the purchase based upon TMD cost estimate or the quote/bid provided by the vendor(s).

6. Prepares a requisition or use the agency ProCard, if is within the ProCard guidelines.

7. Obtains all required approvals for the purchase.

8. Forwards the requisition with attached documentation to Purchasing & Contracting.

Purchasing & Contracting

1. Audits the requisition for completeness (i.e., class/item, commodity code, description, quantity, price, etc.), necessary approvals, and backup documentation, if applicable.

2. Uses the information on the requisition to complete a PO, attaches the standard terms and conditions if needed- -to be sent by the requestor or program, to the vendor.

These deliverables are not a substitute for the advice of an attorney.

Purchases $5,000.01 – $25,000.00

Requestor/Program

1. Identifies the Class-Item.

2. If DIR has a contract for the class-item of your procurement but the contract does not offer the product or service you are procuring, and your procurement does not fall under a DIR Blanket Exemption, obtain an exemption from DIR.

3. Finalizes specifications or Scope of Work, if required.

4. Prepares a list of vendors from the CMBL according to the class and item number. May want to also include the District in your search. The CMBL printout must reflect the date solicited.

5. Obtains informal (verbal or written) bids from at least three (3) vendors on the CMBL list.

6. State HUB statutes require that at least two (2) of these vendors must be HUB vendors. Lists of HUBs can be found at the CPA website http://www.window.state.tx.us/procurement//cmbl/cmblhub.html.

7. Non-CMBL vendors must submit a written request on company letterhead to obtain information regarding any bid over $5,000.00.

8. Request informal (verbal or written) bids by contacting each vendor.

9. Records all information received from the vendors onto a Bid Tabulation Summary and suggest a vendor. Must provide a written explanation whenever a vendor placing the lowest bid is not selected, when fewer than three (3) bids are taken, or when bids are not secured from certified HUB vendors.

10. Determine if funds are available for the purchase based upon TMD cost estimates or quotes/bids provided by the vendors.

11. Prepares a requisition.

12. Obtains all required approvals for the purchase.

13. Forwards the requisition with all attached documentation to Purchasing & Contracting.

These deliverables are not a substitute for the advice of an attorney.

Purchasing & Contracting

1. Audits the requisition for completeness (i.e., class/item, commodity code, description, quantity, price, etc.), necessary approvals, and backup documentation, if applicable.

2. Uses the information on the requisition to complete a PO, attaches the standard terms and conditions if needed- -to be sent by the requestor or program, to the vendor.

Purchases $25,000.01 or more

Large purchases may not be divided into small lot purchases in order to fall within specific dollar limits. This is considered splitting orders and is non- compliant.

Requestor/Program

1. Identifies the Class-Item.

2. If DIR has a contract for the class-item of your procurement but the contract does not offer the product or service you are procuring, and your procurement does not fall under a DIR Blanket Exemption, obtain an exemption from DIR.

3. Finalizes specifications or Scope of Work, if required.

4. Prepares a requisition.

5. Obtains all required approvals for the purchase.

6. Forwards the requisition with all attached documentation to Purchasing & Contracting.

Purchasing & Contracting

1. Upon receipt of the requisition, prepares a list of vendors from the CMBL according to the class and item number. The CMBL printout must reflect the date solicited.

2. Prepares a formal solicitation packet. If the estimated dollar amount on the requisition is $25,000.01 or more, the formal solicitation must be posted on the ESBD.

4. Must solicit a minimum of three (3) formal bids from the CMBL.

5. At least two (2) of these bids must be from certified HUB vendors from the CMBL.

6. The CMBL printout must reflect the date solicited.

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7. Evaluates the bids received and records all information received from the vendors onto a Bid Tabulation Summary. Selects the vendor, with the help of the program area, if necessary.
8. Issues the PO and sends it to the vendor.

9. Email copies of the PO to the program.

10. Posts the award on the ESBD, if applicable.

M. Negotiations and AIS/Telecom Purchases

One of the unique features of the AIS/Telecom commodities and services procedure is the ability of a qualified ordering agency and the vendor to negotiate additional terms and conditions, and any other details of an offer for a product or service.

An agency should attempt to negotiate any offer from the vendor. Negotiations should be handled by a representative of the user agency trained in the art of negotiations who also has decision-making authority.

Negotiations should be allowed with all vendors submitting offers if one or more is given the opportunity to change their offer.

N. Telecommunication Services through DIR

In accordance with Texas Government Code, Title 10, Subtitle D, Chapter 2170, the DIR's Telecommunications Services Division is solely responsible for obtaining telecommunications services for state agencies.

Telecommunication services may only be purchased from the DIR unless an exemption is granted from the DIR's Telecommunications Division.

Telecommunications services include:

- A certified telecommunications utility;

- A shared tenant service provider;

- A non-dominant carrier of telecommunications services;

- A provider of commercial mobile service;

- A telecommunications entity that provides central office-based PBX- type sharing or resale arrangements; and

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- Internet service.

O. Advance Payments

With certain exceptions, a state agency may not pay for goods or services before their delivery to the agency. For more information on advanced payments, refer to CPA's *Procurement Manual* which can be found at http://www.window.state.tx.us/procurement/pub/manual/ under Section 2.52, Prepayment and Advanced Payment, and CPA's Purchase Policies and Procedures Guide under Chapter 2 Restricted Expenditures which is located at https://fmx.cpa.state.tx.us/fm/pubs/purchase/04/2004PurchasePolicyProced.pdf.

P. Texas Multiple Award Schedule (TXMAS) Contracts

By statutory authority the CPA has established as an alternative purchasing method, the use of multiple award schedule contracts that have been previously competitively awarded by the Federal government or any other governmental entity in any state. As the responsible Federal entity, the General Services Administration (GSA), Federal Supply Service awards Federal Supply Schedule contracts by competitive procedures for more than 50 schedules that cover multiple commodities and services. The prices reflected on a GSA schedule contract are most favored customer prices and the maximum price allowable. An agency or local government may negotiate a lower price for the goods or services offered on a schedule contract. Based on agency input, GSA Multiple Award Schedule contracts have been developed for use under the TXMAS program.

The statute that governs the TXMAS program requires consistency with existing purchasing standards. Therefore, the order of precedence is to consider Texas Council for Purchasing from People with Disabilities contracts, currently Texas Industries for the Blind and Handicapped (TIBH), Texas Correctional Industries (TCI) contracts, DIR, Statewide Term Contracts, and lastly, TXMAS contracts. However, Best Value Justifications are allowed to justify why a term contract was not used in favor of a TXMAS Contract.

When the item is found on each of the TXMAS contracts reviewed, a final Best Value determination must be made, refer to, Para I.

TXMAS contracts are considered "price analyzed" because they are based upon Federal government multiple award schedules on which a price/cost analysis has already been performed, or other multiple award schedules where the products and services have been competitively bid, price compared and are presumed fair and reasonable. Requires a Best Value determination.

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Purchases of $5,000 or less

Requestor/Program

1. Identifies the Class-Item.

2. Checks the TIBH catalog to see if the product/service is available for purchase. If a product/service is found that will meet the need, purchases the product/service from TIBH.

3. Checks the TCI catalog to see if the product/service is available for purchase. If a product/service is found that will meet the need, purchases the product/service from TCI.

4. Checks DIR to determine if the product is available as an AIS and can be procured from a DIR established contract.

5. Checks the TxSmartBuy before checking CPA term contracts (Automated and Non-Automated) to see if the product/service is available for purchase. If the product/service is found that will meet the need, purchases the product/service from the TxSmartBuy or CPA term contract, if it provides the Best Value.

6. Checks the TXMAS contracts to see if the product/service is available for purchase which may be viewed at http://portal.CPA.state.tx.us/txmas/.

7. If the product/service is available for purchase on a TXMAS contract, must obtain verbal or written pricing from the point-of-contact on the contract. Verbal quotes must be documented to the file to include date, amount, and vendor contact name. Must obtain written pricing for services. Attach the quote to your requisition.

8. If applicable, prepares a proprietary justification letter.

9. If funds are available for the purchase, prepares a requisition and references the TXMAS contract number in the Description field.

10. Obtains all required approvals for the purchase.

11. Forwards the requisition with required documentation to Purchasing & Contracting.

Purchasing & Contracting

1. Audits the requisition for completeness (i.e., class/item, commodity code, description, quantity, price, etc.), necessary approvals, and backup documentation, if applicable.

2. Documents the Best Value basis in the PO file.

3. Uses the information on the requisition to complete a PO, attaches the standard terms and conditions if needed, and sends the PO to the vendor.

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4. Sends a copy of the PO to the program.

Purchases of $5,000.01 or more

Requestor/Program

1. Identifies the Class-Item.

2. Checks the TIBH catalog to see if the product/service is available for purchase. If a product/service is found that will meet the need, purchases the product/service from TIBH.

3. Checks the TCI catalog to see if the product/service is available for purchase. If a product/service is found that will meet the need, purchases the product/service from TCI.

4. Checks DIR to determine if the product is available as an AIS and can be procured from a DIR established contract.

5. Checks the TxSmartBuy and the CPA term contracts (Automated and Non- Automated) to see if the product/service is available for purchase. If the product/service is found that will meet the need, purchases the product/service from the TxSmartBuy or the CPA term contract, if it provides the Best Value.

6. Checks the TXMAS Contracts to see if the product/service is available for purchase, which may be viewed at http://portal.CPA.state.tx.us/txmas/.

7. If the product/service is available for purchase on a TXMAS contract, obtains price quotes in writing from each of the vendors that offer the items sought. The price quotation and the best value determination will be documented in the file. Attaches all quotes to the requisition.

8. Records all the information received from the vendors onto a Bid Tabulation Summary.

9. If applicable, prepares a proprietary justification letter.

10. If funds are available for the purchase, prepares a requisition and references the TXMAS contract number in the Description field.

11. Obtains all required approvals for the purchase.

12. Forwards the requisition with required documentation to Purchasing & Contracting.

These deliverables are not a substitute for the advice of an attorney.

1. Audits the requisition for completeness (i.e., class/item, commodity code, description, quantity, price, etc.), necessary approvals, and backup documentation, if applicable.

2. Documents the Best Value basis in the PO file.

3. Uses the information on the requisition to complete a PO, attaches the standard terms and conditions if needed, and sends the PO to the vendor.

4. Posts an "Award Notice" on the ESBD if the order totals more than $25,000.

5. Sends a copy of the PO to the program.

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Process for Procuring Services

A. General Information

Services are procured in much the same manner as goods. The method of procurement depends on:

- The cost and type of services needed;
- Whether or not the services can be obtained from vendors on state contract; and
- If non-state contract, whether procurement of the services is subject to CPA approval, and/or whether bids must be obtained.

Many of the services required by TMD cannot be filled by state contract vendors and will be of two broad types: services delegated under CPA authority and services not delegated from CPA authority.

The information that follows pertains to the procurement of delegated and non-delegated services under CPA authority.

B. Procuring Services under CPA Contract

Generally, the services on state contract are for temporary employee(s), business cards, deliveries, and other similar services. A list of these services can be found on the CPA State Contracts website. The process for procuring services from state contract vendors is as follows:

Requestor/Program

1. Identifies that services are needed.
2. Provides detailed specifications of the services, including the term of the contract (beginning and ending dates).
2. Identifies the NIGP Class-Item code(s).
4. Determines if the services are covered by state contract.
5. Enters all necessary information into the IEMS with all fields completed and routes for required approvals.
6. Ensures that funds are available to pay for the requested services.

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Budget

Verifies funding and coding.

Purchasing & Contracting

1. Audits the requisition for completeness (i.e., NIGP class and item code, commodity code, description, quantity, price, etc.), and any necessary documentation, if applicable.

2. Enters the requisition via TX Smartbuy. CPA issues the PO, submits the PO to the vendor, and forwards a copy of the PO to TMD Purchasing & Contracting

C. Procuring Delegated Services

The procurement of delegated services is similar to the process of procuring delegated goods. For detailed information on procuring AIS/Telecom; Emergency; and Proprietary services, please refer to the above. Services provided under consultant or professional contracts are handled differently.

Note: Contracting Officers are required to independently verify vendor qualifications (i.e., checking references, validating credentials) when applicable.

Exception: Printing requirements exceeding $1,000, refer to CPA's *Procurement Manual* under Section 2.21.3 for procedures on printing purchases. Printing is a means of graphic production or reproduction of paper documents using a printing press or high volume digital printing equipment. If print jobs are needed on a more –or-less regular schedule, that is identical or substantially the same job each time, the jobs should be considered one job for procedural purposes. Full specifications, quantities, printing schedule, evaluation criteria, etc. shall be submitted on the State Print Shop Bid Request Form for jobs to be printed outside the agency that exceed $1,000. The Program Area will gather responses and their recommendation, and submit to Purchasing & Contracting for determination whether the purchase shall proceed or additional steps are required.

Services of $5,000.00 or less

1. Identify the NIGP Class-Item code(s).

2. The requestor or Program obtains one (1) written quote (preferably from a HUB vendor).

3. For purchases less than $5,000, the CMBL may be supplemented with non- CMBL vendors.

These deliverables are not a substitute for the advice of an attorney.

Services of $5,000.01 – $25,000.00

1. Identify the NIGP Class-Item code(s).

2. The requestor/program must obtain a minimum of three (3) written informal price quotes from vendors located on the CPA Centralized Master Bidders List (CMBL) Two (2) bids must be received from CPA certified HUB vendors. The CMBL printout must reflect the date solicited.

3. The procurement should be processed according to delegated purchasing procedures as referenced above.

Services of $25,000.01 – $100,000.00

Requestor/Program

1. Identifies the NIGP Class-Item code(s).

2. Develops detailed written specifications for the required services. TMD Program Areas must be clear and concise when writing specifications for purchases. PURCHASING & CONTRACTING or other specialized areas of the agency (Information Technologies, Legal, etc.) can provide assistance in developing good specifications or Statements of Work (SOW).

4. Prepares and submits a requisition in the IEMS with all required fields completed.

5. Routes requisition in the IEMS for required approvals.

Purchasing & Contracting

1. + Audits the requisition for completeness (i.e., NIGP Class/Item code, commodity code, description, quantity, price, etc.), and any additional documentation, if applicable.

2. Solicits a minimum of three (3) written quotes, using an Invitation for Bid (IFB) or a Request for Offer (RFO). Two (2) of the quotes must come from certified HUBs.

3. Selects the vendor and notifies the Program.

4. All solicitations and awards of $25,000 or greater must be posted on the ESBD for the required number of days or the contract is void.

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5. For services over $100,000, TMD must use the non-delegated (unless exempt by statute) open market purchase process. The bid package is prepared by TMD and then sent to CATRAD for review and delegation. CPA will solicit or will delegate the purchasing authority back to the agency.
6. Services for $100,000 or more must follow the HUB Subcontracting Guidelines.

7. After a PO has been awarded, PURCHASING & CONTRACTING will retain a copy of the PO in the file.

D. Internal Repairs

An internal repair is a repair to state-owned equipment that cannot be reasonably defined prior to the actual repair and the extent of which cannot be determined until the equipment is disassembled. Please contact your assigned purchaser prior to placing an order. The Program must obtain a written quote prior to placing an order. By definition, an internal repair must contain labor and may also include parts. The requisition should contain at least one line item for parts and at least one line item for labor. If parts or labor are being provided at no charge, it should be reflected as a $0.00 line item. The Purchase Request needs to be annotated as "Internal Repair".

E. Specific Purchases

Temporary Staffing (including TIBH (Goodwill Temporary Services(GTS) and Peak Performers)

1. When Temporary Staffing is Required

a. The Program Area will be responsible for contacting TIBH providers to check the availability of the particular job title needed. GTS should be contacted first and Peak Performers second. You may do so by sending the GTS representative, Chuck Christiano, the request. His contact information is: phone: 512-637-7155; fax: 512-637-7455; e-mail: chuck.christiano@goodwill.org.

   Note: The position title should mirror the CPA term contract position title and will include the base, medium and max rate designation, and highway district.

b. If the first contact cannot provide the needed personnel, please contact Peak Performers at 512-453-8833, extension number 23 or 10.

c. If Goodwill or Peak Performer providers cannot provide a placement, you must request confirmation of such in writing (e-mail or fax) from the providers to include as documentation for the procurement file prior to seeking outside vendors for temporary personnel services.

d. If neither has the needed personnel, competitive purchasing procedures will be utilized.

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2. *Examples of When a New PO Will Be Needed*

a. If the name of a temporary placement changes, then a new requisition must be submitted with reference to the original PO noted and a revised Temporary Placement Form. (Note: If the initial temporary placement **never** began work and no funds from the requisition are expended for the initial temporary placement, then you may use the same PO (prior approval from your PURCHASING & CONTRACTING purchaser must be obtained).
b. If the temporary was dismissed within the first four (4) hours for unsatisfactory reasons, then a new requisition must be submitted. This must be reported to the temporary agency to assure TMD will not be billed for this time.
c. If a job class changes (which also changes the commodity code) then a new requisition must be submitted.

Hints:

- If a temporary placement hired through Peak Performers resigns, you must begin with contacting GTS to locate a replacement.

- Do not contact both GTS and Peak Performers to search for a temporary placement at the same time for the same position. You must give GTS the first opportunity. If GTS cannot locate a placement within four (4) hours, then notify Peak Performers to begin a search for a temporary placement. Peak Performers also has four (4) business hours to locate a placement. Each vendor must be allowed four (4) business hours to locate a placement.

  Note: If GTS locates a temporary replacement after you have notified Peak Performers, you must allow Peak Performers four (4) hours to attempt to fill the position.

- To extend a date without increasing funds and without increasing the number of hours previously authorized, you may submit a change request ten (10) days prior to the original ending date and then PURCHASING & CONTRACTING will issue a POCN.

  Note: All above submittals **must** reference the original requisition number.

3. *Open Market for Temporaries*

If TIBH is unable to provide the necessary personnel and a waiver is requested and received; a program may request open market bids.

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4. Professional License Fees

This type of purchase can be processed via a PO or on ProCard. Below are the guidelines to follow for this type of procurement:

a. Purchase Order (PO) is the preferred purchase method for license application and license renewal fees.

   1. If the licensing agency does not accept a purchase order then the payment card may be used, so long as the threshold is not exceeded. A requisition shall be completed and submitted through IEMS before the PO can be issued and the fee can be authorized for payment. Documentation required:

   2. Indicate in description of the requisition in IEMS how the license is directly and substantially related to the function that the employee provides to the agency, and how TMD is receiving adequate return on the payment of the license fee;

   3. Complete and submit the original application or renewal form;

   4. The requisition must be submitted in IEMS at least thirty (30) working days before the expiration date of the license.

b. ProCard

   1. Although the ProCard is not the preferred payment method for license application and license renewal fees, the following documentation is required:

   2. Copy of license application or renewal form;

   3. Copy of payment receipt;

   4. Copy of license (if available when ProCard statement is submitted);

   5. Justify how the license is substantially related to the duties as a TMD employee; and

   6. Describe how TMD is receiving adequate return on the payment of the license fee.

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F. Printing

As it applies to State purchasing, printing is a means of word processing or graphic reproduction of paper documents using a printing press. Printing is a service and the authority to procure it is delegated by the Texas Comptroller of Public Accounts to agencies for competitive purchases not exceeding $100,000.

The Council on Competitive Government (CCG) established a new process for soliciting printing services in 2010.

For production of a State publication, TMD must meet State Library Deposit requirements. State publications are information, printed or otherwise, that is publicly distributed and meets certain statutory criteria. For information on State publications and deposit requirements, contact the Texas State Publications Depository Program.

In accordance with CCG rules for any print services that will cost in excess of $1,000 dollars, Purchasing & Contracting staff will then submit the specifications to Texas Correctional Industries (TCI) and the other state franchise print shops next. If the cost estimates, time frame, or other specification cannot be met, only then may the purchaser request solicitations from private printing and design providers.

G. Training

Prior to registration for TMD employee(s) to attend training on or off-site, a purchase request must be submitted and approved in IEMS. The purchase request must include a justification as to how the training is related to the employees' job and how it would benefit the agency. Once the PO has been issued, the employee must complete the registration process. The employee must also complete the receiving process in IEMS after attending the training, ensuring a copy of the successful completion of the training accompanies the request for payment.

Note: Without approval do not attend training and attach an invoice to a purchase request, as this will be a non-compliant purchase. If you fail to provide information in a timely manner your training may become an unauthorized procurement and will have to provide a written justification and report the non-compliant purchase.

These deliverables are not a substitute for the advice of an attorney.

H. Capitalized and Controlled Assets

TMD must capitalize all tangible assets that have a purchase price of $5,000 or more and must control specified assets valued at less than $5,000. The purchase price of a capitalized or controlled asset will include those things required to place the asset into service, including installation, peripheral features, and warranty. Consumable items, add-on parts, or maintenance agreements separate from the original purchase price will not be included. Effective September 1, 2009 based on GASB 51 regarding intangible assets, computer software will only be capitalized with a purchase price of $100,000.00 for off the shelf products and $1,000,000.00 for internally generated or developed products. Heavily modified products are considered internally generated. TMD must keep software valued at the old capitalization thresholds tagged and on **State Property Accounting** (SPA) until disposal.

Accounting and Purchasing & Contracting will work together to determine whether or not a part valued at $5000.00 or more must be assigned a tag number based on current State and TMD Property Accounting rules and procedures. If the part must be tagged, the TMD property manager will inform as to appropriate procedures to tag the part.

TMD manages both capitalized and controlled assets by issuing property tags/lists that are affixed to the asset.

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Table 5: The Texas Military Department – Controlled and Capitalized Assets

The following is a list of capitalized and controlled assets for TMD.

TMD Controlled and Capitalized Assets				
CompObj/ Account	**Description**	**Threshold**	**Controlled**	**Capitalized**
7361	Capitalized Personal Property	$5,000		X
7371	Passenger Cars	No threshold, passenger use only		X
7372	Other Motor Vehicles	No threshold, non-passenger use only		X
7373	Furnishings & Equipment	$5,000		X
7374	Furnishings & Equipment	Cameras, TVs/VCRs/ camcorders and stereo systems >$200- $5,000	X	
7378	Computer	No threshold	X	
7379	Computer Equipment	$5,000		X
7395	Computer Software, Off the shelf	$100,000		X
7390	Computer Software, Internally Generated	$1,000,000		X
7512	Telecommunications Equipment	$5,000		X
7336	Facilities and Other Improvements, Capitalized	$100,000		X
7337	Facilities and Other Improvements	Threshold $100,000 and meet capital lease criteria		X
7341	Construction in Progress	$1,000,000		X
7342	Buildings	$100,000		X

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TMD Controlled and Capitalized Assets				
CompObj/ Account	**Description**	**Threshold**	**Controlled**	**Capitalized**
7343	Building Improvements	$100,000		X
7344	Leasehold Improvements	$100,000		X
7345	Land	Any		X
7346	Land Improvements	Any		X
7350	Buildings	Threshold $100,000 and meet capital lease criteria		X
7520	Infrastructure, Telecommunications	$500,000		X
7388	Personal Property Construction in Progress fabrication of Equipment	$5,000	X	
7367	Personal Property Maintenance and Repair (Drills, Air-Compressors, Generators)	>$500-<$5,000	X	

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Evaluation and Contract Awards

A. Source Preferences

The following source preferences are used when applicable goods or services can be supplied by:

1. Persons with Disabilities

A preference shall be given to products manufactured by workshops, organizations, or corporations whose primary purpose is training and employing persons with mental or physical disabilities, if the products or services meet state specifications of quantity, quality, and price. Competitive bids are not required for purchases of blind-made goods or services offered as a result of efforts by the Texas Council for Purchasing from People with Disabilities (TIBH), if the goods or services meet state specifications of quantity, quality, and price. Reference Texas Gov't Code, Section 2155.441.

2. Texas Department of Criminal Justice (TDCJ)/Institutional Division

A preference shall be given to items manufactured by the Texas Correctional Industries (TCI) under the Prison-Made Goods Act. A TCI waiver must be obtained when goods or services are available but not utilized. Reference Texas Gov't Code, Chapter 497.

3. Texas and United States Products and Texas Services

A preference shall be given to goods, including agricultural products, to those produced or grown in this state or offered by Texas bidders. If goods, including agricultural products, produced or grown in this state or offered by Texas bidders are not equal in cost and quality to other products, then goods, including agricultural products, produced or grown in other states of the United States shall be given preference over foreign products if the cost to the state and quality are equal. Reference Texas Gov't Code, Section 2155.444.

4. Products and Services from Economically Depressed and Blighted Areas

A preference shall be given to goods and services produced in an economically depressed or blighted area if the goods or services meet state specification regarding quantity and quality; and the cost of the good or service does not exceed the cost of other similar products or services that are not produced in an economically depressed or blighted area.
Reference Texas Gov't Code, Section 2155.449. (An economically depressed or blighted area is defined in Texas Gov't Code, Section 2306.004.)

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5. Products of facilities on formerly contaminated property

A preference shall be given for goods produced at a facility located on property for which the owner has received a certificate of completion under Section 361.609, Health and Safety Code, if the goods meet state specifications regarding quantity, quality, delivery, life cycle costs, and price. Reference Texas Gov't Code, Section 2155.450.

B. Specification Preferences

1. Recycled, remanufactured, or environmentally sensitive products

Texas Government Code, Title 10, Subtitle D, Section 2155.445(a) provides that all entities "give preference to recycled, remanufactured, or environmentally sensitive products" as determined by commission rule if the purchases meet applicable specifications as to quantity and quality.

Reporting must be made on agency-delegated purchases with regard to recycled products. In an attempt to automate rather than manually collect this data, Procurements is requesting that end users clearly identify any product or service purchased that includes or falls into one of the following categories:

- E1 – Recycled - a product that contains any amount of recycled material whether post-consumer or pre-consumer.

- E2 – Remanufactured - a product that has been remanufactured, rebuilt, or otherwise restored to a like new condition.

- E3 – Environmentally Sensitive - a product that protects or enhances the environment, or that damages the environment less than traditionally available products. "Clearly identify" means the category of recycled products should be clearly explained in the description of the project block of the - EF.

The Texas Recycling Market Development Board (RMDB) has designated the following recycled content products as 1st Choice products. State agencies have been instructed to "prefer these products to their virgin counterparts. A state agency may choose to buy the virgin (non-recycled) material counterpart of these designated products; however, a writing justification letter signed by the executive head of the agency must be submitted. The justification letter must state the reason(s) for the determination that the 1st Choice product did not meet the requirements of the agency and should include applicable supporting documentation. The justification letter must be filed with the CPA. For a current copy of the 1st Choice Letter of Justification go to http://www.window.state.tx.us/supportserv/prog/green/. This justification must stay in the purchasing file with a copy sent to CPA.

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First (1st) Choice products are:

- Re-refined oils and lubricants;
- Recycled-content toilet paper, toilet seat covers, and paper towels;
- Recycled-content printing, computer and copier paper, and business envelopes; and
- Recycled/reused computer equipment of other manufacturers.

TMD is required to report their combined CPA non-delegated recycled, remanufactured and environmentally sensitive purchase report (provided by CPA) with the agency's delegated recycled report of expenditures for each category for the previous fiscal year to CPA's Texas Procurement and Support Services (TPASS) Division to the attention of TPASS Recycling Coordinator no later than November 20th of each year. This information must be included in the agency's Annual Financial Report (AFR).

2. Energy efficient products

A preference shall be given to energy efficient products if they meet state requirements as to quantity and quality and are equal to, or less than, the cost of other products offered. This preference shall be applied by evaluating the energy use of the product offered and considering the costs of such energy use over the expected life of the equipment. The methodology for evaluating energy use and costs shall be included in the bid invitation. Reference Texas Gov't Code, Title 10, Subtitle D, Section 2155.442.

3. Rubberized asphalt paving material

A preference shall be given to rubberized asphalt paving material made from scrap tires by a facility in this state if the cost, as determined by life- cycle cost benefit analysis, does not exceed the bid cost of alternative paving materials by more than 15%. Reference Texas Gov't Code, Title 10, Subtitle D, Section 2155.443.

4. **Recycled motor oil and lubricants**

A preference shall be given to motor oils and lubricants that contain at least 25% recycled oil if the quality is comparable and the cost is equal or less than new oil and lubricants. Reference Texas Gov't Code, Title 10, Subtitle D, Section 2155.447.

5. Vendors that meet or exceed air quality standards

A preference may be given to goods or services of a vendor that demonstrate that the vendor meets or exceeds state or federal environmental standards, including voluntary standards, relating to air quality; or require that a vendor demonstrate that the vendor meets or exceeds any state or federal environmental standards, including voluntary standards, relating to air quality.

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The preference may be given only if the cost to the state for the goods and services would not exceed 105% of the cost of the goods and services provided by a vendor who does not meet the standards. Reference Texas Gov't Code, Title 10, Subtitle D, Section 2155.451.

Recycled or reused computer equipment of other manufacturers A preference shall be given to a manufacturer that has a program to recycle or reuse the computer equipment of other manufacturers, including collection events, recycling grants, and manufacturer initiatives to accept computer equipment labeled with another manufacturer's brand. Reference Health and Safety Code, Section 361.965(d).

6. Foods of higher nutritional value

A preference may be given to contractor who provide foods of higher nutritional value and who do not provide foods containing trans fatty acids for consumption in the cafeteria. The Department of Agriculture's nutrition standards shall be reviewed in complying with this preference. Reference Texas Gov't Code, Section 361.452.

7. Tie bid preferences

The preferences listed below are used in breaking tie bids in accordance with current statutes. Priority is given in the order listed below. To claim a preference, a bidder must mark the appropriate box on the bidding document, Invitation for Bid (IFB). If the appropriate box is not marked, a preference will not be granted unless other documents included in the bid indicate a right to the preference.

8. Texas agricultural products

Agricultural products grown in Texas shall be given preference over comparable products grown outside Texas when the cost and quality of the goods are equal. Agricultural products are considered grown in Texas if they contain any amount grown in Texas. In the case of tie bids between agricultural products claiming this preference, the bidder whose product contains the greater percentage of the product grown in Texas shall prevail. For the purpose of this preference, agricultural products include, among other things: textiles and fiber products, processed and unprocessed foods, feed, lumber and forestry products, live animals, plants, flowers, and nursery stock. Reference Texas Gov't Code, Title 10, Subtitle D, Section 2155.444(a).

9. Texas-produced supplies, materials, or equipment

Supplies, materials, or equipment produced in Texas shall be given preference over comparable goods produced outside Texas when the cost and quality of the goods are equal. Supplies, materials, and equipment are considered to be produced in Texas if they are manufactured in Texas. "Manufactured" does not include the process of packaging or repackaging. Reference Texas Gov't Code, Title D, Subtitle, Section 2155.444(a).

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10. Texas resident bidder

Goods produced or offered by a Texas bidder that is owned by a service- disabled veteran who is a Texas resident shall be given a first preference and goods produced in this start or offered by other Texas bidders shall be given second preference, if the cost to the state and quality are equal. Reference Texas Gov't Code, Title 10, Subtitle D, Section 2155.444(a).

11. U.S.-produced agricultural products, supplies, materials, or equipment

Supplies, materials, equipment, or agricultural products produced or grown in the United States shall be given preference over foreign products when the cost and quality are equal, if comparable goods of equal cost and quality produced or grown in Texas or offered by Texas bidders are not available. Reference Texas Gov't Code, Title 10, Subtitle D, Section 2155.444(b).

C. Tie Bids

In breaking tie bids, TMD must use the preference claimed by the bidder on the bidding documents/IFB. In accordance with current statutes, priority is given in the following order:

1. Texas agricultural products;
2. Texas produced supplies, materials, or equipment;
3. Texas resident bidder;
4. U.S. produced agricultural products, supplies, materials, or equipment; and
5. Historically Underutilized Business (HUB).

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If two (2) bidders bid the same bid price and preferences, the bid is awarded by drawing lots, tossing a coin, or drawing names. The award process is conducted with 2 witnesses to oversee the initial bid tabulation and actual bid award. If two (2) bidders bid the same bid price and the preferences checked are different, then the award is based on the priorities listed above.

Table 6: Award Determined by Lot Drawing, Coin Toss, or Name Drawing

Bidder	A	B
TX Agricultural Product		
TX Product		
TX Resident Bidder	X	X
U.S. Product		
Offered by HUB		
Offered by Service-Disabled Vet		

The award is made by drawing lots, tossing a coin, or drawing names.

Table 7: Award Based on Texas Produced Product Priority

Bidder	A	B
TX Agricultural Product		
TX Product	X	
TX Resident Bidder		
U.S. Product		X
Offered by HUB		
Offered by Service-Disabled Vet		

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The award is made to Bidder A because priority is given to the Texas-produced product over a U.S. produced product.

Table 8: Award Based on Texas Resident Priority

Bidder	A	B
TX Agricultural Product	X	X
TX Product	X	X
TX Resident Bidder		X
U.S. Product		
Offered by HUB		
Offered by Service-Disabled Vet		

The award is made to Bidder B. Both bidders indicate a preference to Texas agricultural and Texas-produced products. Priority is given to the Texas resident bidder over the non-Texas resident bidder.

Table 9: Award Based on HUB Priority

Bidder	A	B
TX Agricultural Product		
TX Product	X	X
TX Resident Bidder		
U.S. Product	X	X
Offered by HUB		X
Offered by Service-Disabled Vet		

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D. The Award is Made to Bidder B. Both Bidders Show a Preference to Texas and Reciprocity

To reciprocate is to respond in kind. Texas law requires that out-of-state bidders who reside in states that grant resident bidder preferences for that state's purchases be evaluated in the same manner that a Texas resident bidder would be evaluated in the out-of-state bidder's home state. In other words, the State of Texas will respond in kind, or reciprocate, to preferences made by other states.

Bid evaluation of bidders who reside in a state that has a resident preference law requires reciprocation by adding a residency penalty to the bid for evaluation purposes only. This penalty is equal to the percentage a Texas bidder would have to underbid a resident bidder in a preference state to receive an award in the preference state.

For example, another state gives its in-state bidders a 10% advantage on a certain commodity. In effect, this would penalize a Texas bidder 10% when bidding in that state. Consequently, TMD would add the same 10% penalty to any of those states' bidders when bidding in Texas for the same commodity or service.

CPA publishes the list of other state bidder preference laws at http://www.window.state.tx.us/procurement//stpurch/map/index.html. These codes require the publication of a list of states that have laws or regulations regarding the award of contracts for general construction, improvements, services or public works projects, or purchases of agricultural products, supplies, materials, or equipment to nonresident bidders. Also required is the publication of a citation to and summary of the most recent law or regulation of each state relating to the evaluation of bids and award of contracts to nonresident bidders.

E. Awards

An award is made to the bidder offering the best value for the State while conforming to the specifications required. Complying with the specified time limit for submission of written data, samples, or models, on or before bid opening time is essential to the acceptability of a bid.

In some instances in determining the best value, the safety record of the bidder may be considered. If considered, an adopted written definition and criteria for accurately determining the safety record of a bidder must be provide to prospective bidders in the bid specifications. The criteria must not be arbitrary or capricious, and must be specifically addressed in the solicitation pursuant to the provisions of Texas Gov't. Code Sections 2155.074 and 2155.075.

Any of the criteria listed below may be considered as long as provisions are outlined in the detailed specification. The evaluation criteria must be in the solicitation when it is advertised and should specifically outline what will be considered and what weight the criteria will have in the evaluation process.

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Any criteria must have objective definitions and identified measures. For more complex solicitations, an evaluation team should be utilized including individuals with working and industry knowledge regarding the procurement. Examples of evaluation criteria used in conjunction with the Request for Proposal (RFP) process can be found in the Contract Management Guide at http://www.window.state.tx.us/procurement/pub/contractguide/contractguide.

Typical criteria that should be used in determining the bid offering the best value, in addition to price is:

- The quality, availability and adaptability of the supplies, materials, equipment, or contractual services to the particular use required;
- The number and scope of conditions attached to the bid;
- The ability, capacity, and skill of the bidder to perform the contract or provide the service required;
- Whether the bidder can perform the contract or provide the service promptly, or within the time required, without delay or interference;
- The character, responsibility, integrity, reputation, and experience of the bidder;
- The quality of performance of previous contracts or services;
- Any previous or existing noncompliance by the bidder with specification requirements relating to time of submission of specified data such as samples, models, drawings, certificates, or other information;
- The sufficiency of the financial resources and ability of the bidder to perform the contract or provide the service; and
- The ability of the bidder to provide future maintenance, repair parts, and service for the use of the contract.

Additional general best value evaluation factors may be found in Texas Gov't. Code, Section 2155.074.

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F. Aid to Evaluation "The Written Data Rule" Applies in Two Cases

The purchaser may request written data in order to evaluate bids. A bid invitation that expressly requires the submission of written data with the bid must include the following statement or its substantial equivalent. A bid is to be disqualified if data is not submitted with the bid: "Failure to provide the required information with the bid response will automatically disqualify the bid from consideration for award in connection with this transaction."

When evaluating bids, primary consideration may be given to the written data already held out to the public.

Caution should be exercised when using this mandatory requirement as its use will prohibit the acceptance of an otherwise best value bid. The use of the word "may" as opposed to "will" is considered more appropriate because it gives the State the option of requesting the required information.

The following are options when considering an award:

- **Award:** A bidder is selected which offers the best value and meets all the specifications of the bid.

- **No Award:** A no award is based on:

  1. No bidders responded to bid request;

  2. No bidders met the specifications of the bid;

  3. Agency decides it does not wish to make an award due to budgetary constraints or change in agency requirements.

- **Re-Award**: An award may be made to the next lowest bidder meeting the specifications if the original vendor cannot meet the conditions of the purchase order, or permission is granted to cancel the purchase order. When applicable, see Tie Bids.

- **Federal Excluded Persons List System (EPLS):**
  Pursuant to TPASS rules, the state may consider debarment actions by other government entities as possible indicators of vendor responsibility. Prior to awarding any contracts, state agencies and qualified local government purchasing entities are reminded to check the list of vendors excluded from doing business at the federal level by utilizing the **Federal Excluded Persons List System (EPLS)** at http://www.epls.gov. Additionally, in compliance with Executive **Order #13224 - "Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit or Support Terrorism,"** state agencies are responsible for ensuring they do not enter into transactions with or issue payments to those individuals or organizations identified in the **Office of Foreign Assets Control list of Specially Designated Nationals (SDN) and Blocked Persons**. The list may be found at http://www.ustreas.gov/offices/enforcement/ofac/sdn/.

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The EPLS check must be conducted, preferably no more than seven (7) days prior to the award date. It is also recommended that the check be performed prior to the renewal of a contract.
FOR OPTIMAL EPLS SEARCH SELECT *MULTIPLE NAMES*
This search must be done prior to award.
Utilizing Exact Name and SSN/TIN is not recommended

- **Tax Status**: Prior to making an award, the purchaser must verify that the company is in good standing with the State. You must print the letter of corporate standing and include it in the procurement file.

- A vendor's tax standing can be verified through the Comptroller's website at https://cpafmprd.cpa.state.tx.us/tpis/search.html. Select Texas Taxes, and then select Franchise Tax Certification of Account Status. Follow on screen instructions from there. You must print the letter of corporate standing and attach to your procurement file.

You may make an award to a vendor that is on tax hold and not in good standing. If the company is not in good standing, then you should exercise one of the following options depending on what is in the best interest of the State:

1. Advise the company of the tax hold and refer them to the Comptroller's office at 1-800-252-1381 or in Austin at 463-4600, from a Telecommunications Device for the Deaf (TDD) call 1-800-248-4099 or in Austin, the TDD number is 463-4621;

2. Proceed with the procurement process to make an award. Note: The rationale for making an award to an otherwise qualified bidder is that by making the award, an obligation to compensate the vendor is created by the receipt of good or service by the State. Once the request for warrant is processed by the Comptroller's office, the delinquent tax is collected.

Should you require assistance concerning the corporate information presented, please access https://cpafmprd.cpa.state.tx.us/tpis/search.htmlor contact by e-mail at tax.help@cpa.state.tx.us.

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G. Place the Order

Award the contract to the bidder offering the best value while conforming to the required specifications, terms, and conditions. Issue a purchase order or letter of award with the following required information:

- Agency name and address;
- Agency requisition number;
- Date of order (delivery period or beginning and ending dates of service);
- Awarded vendor's name, payee/vendor identification number, and address, including zip code;
- Commodity class and item number;
- Purchase Category Code (PCC);
- Description and specifications of items or services being procured (either include all specification from the bid response or reference that order includes "all terms referenced in the IFB";
- Quantity and unit of measure, if applicable;
- Unit price, if applicable;
- Extended totals;
- Total amount to be paid; and
- Signature of authorized/certified purchasing representative.

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Procurement Completion

A. Inspection and Testing

If an inspection/test will be required prior to acceptance/payment, it should be noted on the Requisition as part of the specifications. The following clause must be used:

"The goods or materials ordered will be tested upon receipt. Testing will take not more than ____ working days. Payment will be made within 30 days after tests have been completed and goods or materials are found to meet specifications or the day, on which the correct invoice for goods or materials was received, whichever is later."

1. All goods are subject to inspection and testing by the state. Authorized TMD personnel shall have access to a vendor's place of business for the purpose of inspecting contracted merchandise.

2. Testing may be performed on samples obtained by TMD request or taken from regular shipments.

3. When products tested fail to meet or exceed all applicable specifications, the cost of the sample used and the cost of any testing shall be borne by the vendor.

4. Goods that have been delivered and rejected in whole or in part may be, at the State's option, returned to the vendor at the vendor's risk and expense or disposed of in accordance with CPA rules or applicable statutes. The State may request that goods be held at the vendor's risk for a reasonable period of time for later disposition at the vendor's expense.

5. Latent defects may result in revocation of acceptance of any product.

6. TMD may, on request, test and inspect goods purchased by other state governmental entities on a cost recovery basis.

7. TMD may also test and inspect goods before they are purchased. Other state agencies may test and inspect goods before purchased under standard industry testing methods, or they may contract for testing. CPA may inform agencies about available private testing facilities.

8. Periodic, random, unannounced inspections of goods purchased by the State are made by CPA. In the case of an unusual product or circumstance, the ordering agency or the CPA purchaser may request additional inspections.

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9. To request a CPA inspection, contact your purchaser in the TMD PURCHASING & CONTRACTING Section.

10. Should an ordering program experience any problem with a commodity at any time, they should immediately report the problem to the Procurements and Contracts Section.

B. Acceptance

Inspections should also occur when the merchandise is being unpacked, uncrated, etc. The merchandise should be checked against the copy of the PO for damages shortages and compliance with the order's specifications.

C. Cancellations

Purchasing & Contracting may cancel a PO if the vendor fails to fulfill contractual obligations. If TMD requests the cancellation through no fault of the vendor, the Purchaser must notify the vendor of cancellation within the notification period contained in the terms and conditions in the solicitation or contract. Purchasing & Contracting must provide written cancellation notice to the vendor indicating the reason for the cancellation and the effective date and time. TMD staff should send all cancellation requests immediately to Purchasing & Contracting for action.

D. Protest Procedures

Any vendor who is aggrieved in connection with the solicitation, evaluation, or award of a contract may formally protest to the TMD Executive Director. Such protests must be received in the TMD office within ten working days from the date of the announcement of the award. TMD will make available to the protestor all requested documents not exempted from disclosure under Texas and federal law.

E. Vendor Non-Performance

If a vendor fails to perform, TMD staff should send written complaints to Purchasing & Contracting for action. Purchasing & Contracting can cancel the PO and issue an award to the next best bidder to complete the order. In addition, TMD can collect damages from a non-performing vendor for the difference between his price and the price TMD would have to pay to replace the non-delivered good or service.
CPA maintains a vendor performance program for use by all state agencies. Vendor tracking by CPA relies heavily on agency participation to gather information on vendor performance. Purchasing & Contracting posts all vendor performance complaints or commendations on the ESBD maintained by CPA.

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Procurement Administration

A. General Information

Contract administration is often one of the most neglected parts of the procurement process. Good contract administration requires dedication and persistence. The intensity and manner of contract administration will depend on the type of contract. Small dollar contracts with short durations or procurement for a one-time purchase may take less administration than those for large dollar projects of a lengthy duration. Contract administration is a critical element in the procurement cycle and must be carried out in all public purchasing operations. The following apply to both goods and services:

1. Inspection of merchandise: Programs must inspect all shipments received against orders and report via email any discrepancies to Purchasing & Contracting. Unless shipments are checked immediately upon arrival and discrepancy reports are made within 15 days, the vendor cannot be held responsible. A vendor may be required to pick up any merchandise not conforming to specifications and replace that merchandise immediately.

2. Substitutions: Substitution of items called for in a contract is not permitted without the agency's prior approval. No such approval will be granted unless substituted items are of equal quality and are offered at the same or lower price. Before a substitution is permitted, written approval must be obtained from PURCHASING & CONTRACTING. If a vendor is unable to deliver the product ordered, he/she may offer another brand and/or model as a substitution. The offer should be in writing. The proposed substitution must:

   - Meet and/or exceed the original advertised specifications.
   - Be of equal quality and type.
   - Be offered at the same or lower price.

Once a substitution is determined acceptable, the program will request via e-mail to **Purchasing & Contracting**, and Purchasing & Contracting will send a POCN to the vendor confirming that the substitution has been authorized.

If the substitution is determined to be unacceptable, the vendor will be requested to locate another possible substitution that meets the specification requirements. If the vendor is unable to supply an acceptable substitution, the purchaser should cancel the item or order, as applicable. The item or entire order may be re-awarded. Actual damages may be assessed at the award stage when the new price is defined. Note: If the order is a CPA-issued order, the vendor must request approval from CPA.

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3. Damages for failure to perform: A vendor who fails to perform as required under a contract shall be liable for actual damages and costs incurred by the State as allowed by law.

   If any merchandise delivered under a contract has been used or consumed by an agency and, upon testing, is found not to comply with specifications, no payment may be approved by TMD for such merchandise until the amount of actual damages incurred by the State has been determined.

   A vendor who fails to pay damages assessed by the State may not be awarded additional contracts until such damages have been paid or the matter has been otherwise resolved.

   CPA shall seek to collect damages by following the procedures established by the Office of the Attorney General for the collection of delinquent obligations for orders issued by CPA.

4. Cancellations: Items or orders may be canceled without the consent of the vendor, if the vendor has failed to fulfill his/her contractual obligations.

   If cancellation is requested by an end user for some other reason through no fault of the vendor, the vendor's permission to cancel is necessary.

   CPA-issued orders may only be canceled by CPA.

5. Restocking charges: If the return or cancellation is required through no fault of the vendor, the vendor may request a reasonable restocking charge or cancellation fee.

   TMD may pay a restocking charge, cancellation fee, or other similar charge if the charge is justifiable. As a guideline, restocking charges of 15% or less (plus freight) of the original cost of the materials are generally considered reasonable. Charges exceeding this guideline may require additional information.

   - Less than 15% - may be accepted without CPA approval, except for CPA- issued orders.

   - Greater than 15% - must call CPA commodity's purchaser for approvals if it is a CPA- issued order.

6. Over-shipments: TMD is not under any obligation to accept over- shipments that are not within the terms and conditions of the contract.

   In some industries however; such as printing, it is customary, and it may be in the agency's best interest to accept the over-shipment. If you know an industry has these customs, you should consider making allowance for them in your specifications.

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7. Shipments from canceled orders: TMD is not under any obligation to accept shipments from canceled orders. If it is in the ordering program area's best interest to accept the shipment, the order should be reinstated.

   If the program area does not want the shipment, they should notify the vendor and handle it in the same manner they would any item not ordered.

8. Changes to Purchase Orders: A POCN must be requested by the program and processed to **Purchasing & Contracting** to effect any change once an order is issued. Prior to requesting a change, check with PURCHASING & CONTRACTING.

   A change may be requested for the following reasons only:
   a. Add or change items allowed for in the original terms and conditions of the contract or order;
   b. Cancel an entire order;
   c. Delete individual items from a PO;
   d. Change quantities for over-shipments or under-shipments. Only whole units can be changed (i.e., whole boxes or packages are considered whole units, while ½ boxes or packages are not);
   e. Add options when a specific contract allows accessories or maintenance to be added;
   f. Reinstate POs that were canceled in error, or POs canceled due to non-delivery that are subsequently shipped and received;
   g. Change pertinent information such as delivery address, agency point- of-contact, a new serial number for replacement of a defective product, or amend rental periods in accordance with the contract;
   h. Extend or increase orders in accordance with the terms of the order;
   i. Approve product substitutions that meet all contract requirements.
   j. Required documentation from the program must be submitted via email to Purchasing & Contracting.
   k. PO number, requested date of change, commodity code, or item number (copy of original PO must be attached, identifying appropriate changes).
   l. The requested change (i.e., increase, decrease, cancellation, etc.) of the specific item, quantities, unit prices, extensions, and new PO total.
   m. Documentation must be sent by PURCHASING & CONTRACTING to CPA for term contracts, open market purchases, and scheduled orders for file update and vendor tracking.

9. Vendor performance tracking (external): CPA administers a Vendor Performance Program for use by all ordering entity.

   This program relies heavily on the ordering agency's participation in gathering information on vendor performance. Therefore, it is important to monitor vendor performance.

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All vendor performance issues, including commendations and complaints, should be reported to **Purchasing & Contracting**. A vendor's performance should be reported by **Purchasing & Contracting** to CPA by submitting a Vendor Performance Form.

10. E-Verify is an Internet-based system that compares information from an employee's Form I-9, Employment Eligibility Verification, to data from U.S. Department of Homeland Security and Social Security Administration records to confirm employment eligibility

    On December 3, 2014, then Governor Rick Perry issued Executive Order RP 80, requiring all state agencies to use the U.S. Department of Homeland Security's E-Verify System to verify state employees' eligibility to work in the United States. The order also requires all agencies under the direction of the governor to include, as a condition of all state contracts for services, a requirement that contractors utilize the E-Verify system. State contractors are to be required to determine the eligibility of all persons employed during the contract term to work in Texas and all persons (including subcontractors) assigned by the contractor to perform work pursuant to the contract.

    To ensure contractor compliance, on January and June 15th of each year, the Texas Military Department will randomly select a number of executed contracts containing this provision for compliance of the E-Verify system rules and guidelines. The Contractor shall provide, upon request of TMD, an electronic or hardcopy screenshot of the confirmation or tentative non-confirmation screen containing the E-Verify case verification number for attachment to the Form I-9 for the three most recent hires that match the criteria above, by the Contractor, and Contractor's subcontractors, as proof that this provision is being followed. All information provided will be placed in the contract file and subject to open records.
    For more information, please refer to: http://www.uscis.gov/e-verify

B. Purchasing Terms, Delegation Matrix and Exemption

Glossary of Purchasing Terms can be found in the CPA/TPASS Procurement Manual the link is http://www.window.state.tx.us/procurement/pub/manual/4-6.pdf.

Delegation Matrix can be found on the t-net at the following link http://home.TMD.texas.gov/internal/admin/fa/purchasing/docs/DelegatedSignatureAuthority.pdf.

Exemptions are purchases not requiring CPA approval, Document Type 9.

Commodities and services may be exempt, by statute, from the authority of CPA or from competitive bidding.

Any purchases for goods or services procured as exempt from competitive bidding must reference the specific legal cite allowing the exemption included on the Purchase Order.

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If there is no legal cite to support the exemption, then the following must be adhered to:

- Agencies should attempt to bid these goods or services when the competitive bid threshold (currently $5,000) is exceeded.

- If an agency is unable to solicit competitive bids for these goods or services, the requisition and Purchase Order should be qualified as a proprietary procurement and a justification letter should be attached to the order.

The following exemptions are contained in Tex. Rev. Civ. Stat. Ann. Article 601b which was codified in the 73rd legislative session in the Texas Government Code Ann. Title 10, Subtitle D, Chapter 2151 et seq.:

Exemptions – Document Type 9

- Auxiliary enterprises 2155.141

- Blind-made goods or services offered for sale to state agencies 2155.138

- Construction projects by or under the supervision of any public authorities created by the laws of this state; or state-aided local government projects of any character whatsoever 2216.004

- Construction projects undertaken by Texas Department of Criminal Justice 2166.003(b)

- Consulting services or services of a private consultant as defined in Texas Government Code 2254.021 et seq 2155.001

- Council on Competitive Government (CCG) Contracts (Document Destruction Services, Retail Fuel Purchase, Expanded Mail Presort, etc.) 2162.105

- Group Purchasing Program: Purchases by state-owned hospitals or clinics through a group purchasing program comprised of 2 or more hospital or clinic facilities 2155.139(b)

- Items required by statute to be purchased from a particular source 2155.132(f)(2)

- Lease payments for district office space for certain agencies and programs 2167.002

- Legislative agency purchases for the following agencies: 101,102, 103,104, 105, 116, 308, and 362 2155.203

- Library materials and services within a university or institution of higher learning, state-owned hospital, or clinics (including Amigos Library services) for certain limited purchases 2155.139(a)

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- Organized activities relating to instructional departments of institutions of higher learning and similar activities of other state agencies 2155.141

- Professional services and fees: services listed in Texas Government Code 2254.001 et seq 2155.001

- Purchases made from gifts or grants, including industrial grants or contracts in support of research or federal grants or contracts in support of research in aid payments (HEAF) 2155.140

- Purchases of products and services of workshops, organizations or corporations whose primary purpose is training and employing mentally or physically handicapped persons (TIBH set-aside contracts) 2155.441
- Repairs and renovations to buildings excluded by CPA: a letter of exclusion from TFC's Facility Construction and Space Management Division should be attached 2166.003(a)(7)

- Repairs and renovations to buildings and projects by agencies listed 2166.003, 2166.004

- Residential space for Mental Health and Mental Retardation (MHMR) 2167.001(b)(2)

- Residential space for Texas Youth Commission (TYC) 2167.001(b)(3)

- Scientific and technical environmental services: services defined in the Texas Water Code 5.2291

- Services of an employee of a state agency 2155.001

- Texas Department of Criminal Justice made goods 2155.065

- Utilities (services of public utilities): natural gas, electric, water, sewage, and garbage services, other services and charges for utility services, and local telephone service 2155.001

- Vehicle maintenance and repair: any contract for repair of vehicles made by the Inter-agency Services division of CPA 2171.102(c)

- Veterans' Land Board purchases in connection with improvements, repairs, or maintenance of land or other activities undertaken by

- Veterans' Land Board with respect to land 2155.149

Please consult your legal counsel for further exemptions applicable to TMD.

Special Note: **If not exempt by statute, the General Appropriations Act, or the Texas Government Code, Title 10, Subtitle D, Chapter 2151 et seq., the purchase must be competitively bid or the Purchase Order should be qualified as a**

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proprietary procurement and a justification letter should be attached to the order.

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